

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
**Chief Bankruptcy Judge**  
**Sacramento, California**

**August 17, 2021 at 2:00 p.m.**

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<b>1.</b>	<b><u>19-25608</u>-E-13</b> <b><u>PGM-6</u></b> <b>1 thru 2</b>	<b>CECILIA SMITH</b> <b>Peter Macaluso</b>	<b>MOTION TO APPROVE LOAN</b> <b>MODIFICATION</b> <b>7-14-21 [<a href="#">158</a>]</b>
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**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 14, 2021. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Approve Loan Modification is <span style="color:red">XXXXX</span>.</b>
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The Motion to Approve Loan Modification filed by Cecilia Smith ("Debtor") seeks court approval for Debtor to incur post-petition credit. Guild Mortgage/Vitek Mortgage Group ("Creditor"), whose claim the Plan provides for in Class 4, has agreed to a loan modification with a monthly mortgage payment in the amount of \$1,277.00. The modification provides for a 3.0% interest rate over the new principal balance of \$170,237.44 for a 30 year loan.

The Motion is supported by the Declaration of Cecilia Smith. Dckt. 160. The Declaration

affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

Trustee filed a Response on August 4, 2021 indicting non-opposition to the loan modification but notes that Debtor has not sought approval for the partial claim amount of \$52,475.97 reported in loan modification documents (Dckt. 140, at 3). Dckt. 169. Trustee then notes that there are two pending matters: a Motion to Dismiss to be heard prior to the instant Motion and Trustee's Objection to the plan where Trustee points the court to the partial claim and the lack of information provided concerning the loan modification documents. *Id.*

On August 4, 2021 Trustee's Motion to Dismiss was denied on the basis that Debtor appeared to actively prosecute the case where she filed a Motion to Modify to address the delinquency. Civil Minutes, Dckt. 172.

Debtor filed a Reply on August 10, 2021 asserting that Debtor has submitted with the court what she has been provided, which is all six pages of the loan modification agreement that have been filed as Exhibits A and B (Dckt. 161). Debtor notes that she is current with the proposed plan payments and thus the Motion should be granted.

### **Review of Motion and Loan Documents**

In the Motion, Debtor states with particularity:

- The modified monthly payment will be \$717.73 for principal and interest and \$559.98 for an "escrow payment." The interest rate is 3% per annum. Motion, ¶ 5; Dckt. 1.
- The modified principal balance includes all amounts and arrearages that will be past due as of the "Modification Effective Date." This date is not identified in the Motion. *Id.*, ¶ 6.
- As of the Modified Effective Date, the principal balance of the loan will be \$170,237.44. *Id.*, ¶ 7.
- The new maturity date for the modified loan will be July 1, 2051. *Id.*, ¶ 10.

The Loan Modification Agreement; Exhibit A, Dckt. 161; states that the amount of the loan is \$170,237.44, the interest rate is 3.00%, the principal and interest payment is \$717.73, and that the maturity date is July 1, 2051. *Id.*, ¶ 2. The final Loan Modification Agreement makes no provision for any "partial claim" in the amount of \$52,475.97. Though that amount was referenced in the trial loan modification; Agreement, Dckt. 140, it is not included as part of the final loan modification.

Debtor's Response does not clearly and directly address the point raised by the Trustee – which could be phrased as an additional \$50,000+ under the table payment to be made by Debtor.

In granting this Motion, the court's order will expressly state that the only obligation owed by

Debtor to Creditor is the amount stated in the Loan Modification and there are no other obligations.

At the hearing, **XXXXXXX**

~~This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Approve the Loan Modification is granted.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Approve Loan Modification filed by Cecilia Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the court authorizes Cecilia Smith to amend the terms of the loan with Guild Mortgage/Vitek Mortgage Group ("Creditor"), which is secured by the real property commonly known as 4405 Calcutta Way Sacramento, California, on such terms as stated in the Modification Agreement filed as Exhibit A in support of the Motion (Dckt. 161).~~

~~**IT IS FURTHER ORDERED** that the obligation of Debtor stated in the Modification Agreement is the total obligation owed by Debtor to Creditor, and there are no other "additional" or other obligations as of the entry of this order relating to the debt that is the subjection of the Loan Modification and the original loan documents.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2021. By the court’s calculation, 35 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXXXX</span>.</b></p>
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The debtor, Cecilia Smith (“Debtor”) seeks confirmation of the Modified Plan so that Debtor may pay lender directly now that she has secured a permanent loan modification with her lender. Declaration, Dckt. 152. The Modified Plan provides for payments of \$310.00 for 62 months, and a six (6) percent dividend to unsecured claims totaling \$21,872.05. Modified Plan, Dckt. 154. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

#### **CHAPTER 13 TRUSTEE’S OPPOSITION**

The Chapter 13 Trustee, David Cusick (“Trustee”), filed an Opposition on August 2, 2021. Dckt. 166. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan is contingent on the court approving Debtor’s loan modification.
- B. Debtor does not account for repayment of 401K loans.

## DISCUSSION

### Approval of Loan Modification

According to Trustee, Debtor's plan depends on the court's approval of a loan modification and Trustee is uncertain that Debtor has submitted all relevant documents for the modification and where creditor's proof of claim indicates a principal balance of \$177,713.21 but the proposed principal balance of the new loan is \$170,237.44.

Debtor filed a Reply indicating that Debtor has no information other than the loan modification having a new loan amount of \$170,237.44. Dckt. 174.

Debtor's Motion to Approve the Loan Modification, set to be heard same date and time as the instant motion was **XXXXXXXXXX**

### Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor's Supplemental Schedule I shows payroll deductions for 401K loan repayments: loan #1 in the amount of \$319.74 ended 11/20 but the amount is still deducted from income; loan #2 in the amount of \$385.80 ends 10/25/21; and loan #3 in the amount of \$287.84 ends 10/25/22. Thus, Trustee argues that Debtor's net monthly income may be currently understated by \$319.74, and Debtor has not proposed any increase in plan payments when the two other loans are repaid. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

In the Reply, Debtor requests permission to increase loan payments in order modifying the plan as follows:

increase the plan payments from \$310.00 by \$320.00 starting on 8/25/21, then from \$630.00 by \$386.00 starting on 11/25/21, then from \$1,016.00, by \$288.00 starting on 11/25/22, for a total of \$1,304.00 until completion of the plan.

Dckt. 174, at 2.

At the hearing **XXXXXXXXXX**

~~————— The court having approved Debtor's loan modification and Debtor addressing Trustee's plan payment concerns, the Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~————— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~————— The Motion to Confirm the Modified Chapter 13 Plan filed by the~~

debtor, Cecilia Smith ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

~~IT IS ORDERED~~ that the Motion is granted, and Debtor's Modified Chapter 13 Plan filed on July 13, 2021, as amended

~~increase the plan payments from \$310.00 by \$320.00 starting on 8/25/21, then from \$630.00 by \$386.00 starting on 11/25/21, then from \$1,016.00, by \$288.00 starting on 11/25/22, for a total of \$1,304.00 until completion of the plan.~~

~~is confirmed. Debtor's Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick ("Trustee"), for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 6, 2021. By the court’s calculation, 42 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">xxxxxxx</span> .</b></p>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtors, Mark Anthony Ramos and Rachel Lorraine Ramos (“Debtor”), have filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on August 2, 2021 but notes that the plan is contingent on the Internal Revenue Service filing a proof of claim for post-petition taxes. While Debtor was fortunate to obtain new employment in 2020, she made an error on her withholding and owes \$9,988.00 in income taxes to the Internal Revenue Service. Motion, ¶ 8; Dckt. 43. No reference is made for any possible state income taxes that may also be owed.

Proof of Claim 4-1 has been filed by the Internal Revenue Service for \$17,620.46, of which \$12,738.41 is stated to be a priority claim. This is for the obligation that was owed as of the 2017 commencement of this case.

At the hearing, **XXXXXXX**

~~The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.~~

~~The court shall issue a minute order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Confirm the Modified Chapter 13 Plan filed by the debtors, Mark Anthony Ramos and Rachel Lorraine Ramos (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on July 6, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.~~



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 8, 2021. By the court's calculation, 42 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of non-opposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtor, Lisa Lynn Moore ("Debtor"), seeks confirmation of the Amended Plan. The Amended Plan provides for monthly plan payments of \$2,800.00 per month until completion of the Plan in month 60, and a zero percent dividend to unsecured claims totaling \$26,282.00. Amended Plan, Dckt. 134. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

#### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on June 28, 2021. Dckt. 149. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor's declaration stating that her income has "increased a small amount" and "some of my expenses have changed (utility bills have gone up, cell phone bills have increased, etc)" conflicts with the amended schedules.
- B. Debtor does not specify whether she made Class 4 payments through and including May 2021, despite stating that the "Plan shall be considered

current as of May 2021.”

## **DISCUSSION**

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor states that her income has “increased a small amount,” and that the expenses have also increased. Debtor’s amended Schedule I lists gross income as \$4,575.36. Dckt. 136. Prior to the amendment, Debtor identified her gross income as \$4,961.49. Dckt. 106.

Debtor’s Supplemental Schedule J, Dckt. 134, reflects changes including: removal of the ongoing mortgage payment, electricity increased by \$25.00, phone by \$78.00 and pet supplies by \$75.00. Debtor decreased expenses include: medical, transportation and entertainment by \$50.00, and auto insurance by \$44.00. Debtor’s net income is now listed as \$2,797.33. However, in her declaration, Debtor states, “while my income has increased a small amount, some of my expenses have changed (utility bills have gone up, cell phone bills have increased, etc).” Therefore, the declaration conflicts with the amended schedules and the Trustee is not certain if the Debtor can make the payments under the Plan or comply with the Plan.

Moreover, Trustee asserts that in order to determine whether the plan is feasible, the Trustee needs to know when ongoing payments to the Class 1 creditor are going to begin. As stated in the plan, the treatment to and for Select Portfolio Servicing has changed from Class 4 to Class 1 since the Debtor filed her voluntary petition on February 21, 2019 but the plan does not specify whether Class 4 payments were made by the Debtor through and including May 2021, but it does state in the Nonstandard Provisions that, “Plan shall be considered current as of May 2021.” Dckt. 134.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

Counsel for the Debtor stated at the hearing that this Modification is to move a Class 4 claim into Class 1.

Counsel for the Trustee and Counsel for Debtor agreed to a continuance to allow Debtor to provide the additional information to the Trustee.

### **August 17, 2021 Hearing**

As of the court’s drafting of this pre-hearing disposition no further documents have been filed.

At the hearing **xxxxxxx**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 21, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
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**The Objection to Confirmation of Plan is sustained.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to provide Social Security number at the Meeting of Creditors.
- B. Debtor failed to file 2018 tax returns.
- C. Debtor fails to provide for a secured claim.

## **DISCUSSION**

Trustee's objections are well-taken.

### **Failure to Provide Social Security Number**

Trustee alleges Debtor failed to provide proof of his social security number at the Meeting of Creditors. Every individual debtor shall bring to the meeting of creditors under 11 U.S.C. § 341 evidence of social security number(s), or a written statement that such documentation does not exist. FED. R. BANK. P. 4002(b)(1)(B). Without the required documents, the Trustee is unable to properly examine the Debtor at the meeting of creditors.

The Continued Meeting of Creditors was held on August 12, 2021, and the Chapter 13 Trustee's Report indicates Debtor appeared. The Chapter 13 Trustee concluded the meeting as to Debtor and has filed nothing further, and the court therefore determines that Debtor's appearance has resolved this ground for opposing confirmation.

### **Failure to File Tax Returns**

Trustee argues that Debtor may have failed to file tax returns where he Internal Revenue Service Proof of Claim 2-1 indicates that no tax returns were filed for 2018 and there in a priority claim in the amount of \$14,361.49. Trustee asserts that Debtor testified at the Meeting of Creditors that he having filed tax returns for the four-year period prior to the filing of the petition and provided copies of his 2018, 2019, and 2020 tax returns. Filing of the return is required. 11 U.S.C. §§ 1308, 1325(a)(9). Failure to file a tax return is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). The Chapter 13 Trustee asserts that the PMGI Financial, LLC has a claim for \$5,231.75 secured by an Abstract Judgment. Proof of Claim 1-1, filed on June 14, 2021. Debtor's Plan does not provide for this secured claim. Trustee further asserts that failure to provide for this claim will result in this debt not being discharged under 11 U.S.C. § 1328(a) after Debtor completes the Plan. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 13, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Avoid Lien is granted.</b>
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This Motion requests an order avoiding the nonpossessory, nonpurchase-money security interest of OneMain Financial Services, Inc., as servicer for Springleaf Funding Trust 2 ("Creditor") against personal property of the debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") identified as a Sony Digital Camera, Sony Digital Camcorder, Pioneer HDTV Home Theater System, Sony 32" Television, Sanyo DVD/VCR Combo, and Taylor Golf Clubs ("Property").

According to Debtor, on July 22, 2013, Debtor obtained a loan from Creditor in the principal amount of \$3,853.02, and provided Creditor a security interest in the Property in Debtor's possession. Dckt. 59. Debtor alleges that the loan was neither obtained nor used for the purpose of buying the Property.

Pursuant to Debtor's Schedule A, the subject personal property has an approximate value of \$270.00 as of the petition date. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.020 in the amount of \$270.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no

equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **ISSUANCE OF A COURT-DRAFTED ORDER**

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the nonpossessory, nonpurchase-money security interest of OneMain Financial Services, Inc., as servicer for Springleaf Funding Trust 2 ("Creditor") against personal property of the debtor, Jeffrey Scott Mayhew and Yelena Mikhaylovna Mayhew ("Debtor") identified as a Sony Digital Camera, Sony Digital Camcorder, Pioneer HDTV Home Theater System, Sony 32" Television, Sanyo DVD/VCR Combo, and Taylor Golf Clubs ("Property") is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, , Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 3, 2021. By the court’s calculation, 14 days’ notice was provided. 14 days’ notice is required.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<b>The Motion to Incur Debt is <span style="color: red;">XXXXXXX</span>.</b>
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William Edward Tobin and Janice Ann Tobin (“Debtor”) seek permission to purchase a 2014 Chevrolet Equinox with 66,510 miles, with a total purchase price of \$18,282.75 and monthly payments of \$355.53 to Elk Grove Ford over 72 months with a 16.00% fixed interest rate.

Trustee does not oppose the purchase of the Vehicle, where Debtor’s case was completed on March 5, 2021. Dckt. 45.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at \*1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, “including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions.” FED. R. BANKR. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. *Id.* at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

Here, the transaction may not be in the best interest of Debtor. The loan calls for a substantial interest charge—16%. Debtor explains that it is their understanding that once they received their discharge they will be able to refinance the loan at a lower rate through their credit union.

At the hearing ~~xxxxxxx~~

~~————— The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted. —————~~

~~The court shall issue an order substantially in the following form holding that:~~

~~————— Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~————— The Motion to Incur Debt filed by William Edward Tobin and Janice Ann Tobin (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing;~~

~~————— **IT IS ORDERED** that the Motion is granted, and William Edward Tobin and Janice Ann Tobin is authorized to incur debt pursuant to the terms of the agreement, Exhibit A, Dekt. 42. —~~



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtors, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 5, 2021. By the court's calculation, 50 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

<b>The Objection to Confirmation of Plan is <span style="color: red;">XXXXX</span>.</b>
---

On Q Financial Inc., its assignees and/or successors in interest ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Plan incorrectly lists Creditor's claim as a Class 4 when it should be listed as a Class 1 claim.
- B. The Plan is not adequately funded.

## DISCUSSION

Creditor's objections are well-taken.

### Failure to Cure Arrearage of Creditor

The objecting creditor holds a deed of trust secured by Debtor's residence. Creditor has filed

a timely proof of claim in which it asserts \$15,000.00 in pre-petition arrearage. Proof of Claim 8-1. The Plan does not propose to cure those arrearage. The Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments because it does not provide for the surrender of the collateral for this claim. *See* 11 U.S.C. §§ 1322(b)(2) & (5), 1325(a)(5)(B). The Plan cannot be confirmed because it fails to provide for the full payment of arrearage.

### **Feasibility**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that because Debtor does not account for the approximately \$15,000 in arrearage, the plan is not adequately funded. Thus, Debtor's plan is not feasible. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing, Debtor's counsel addressed the arrearage, reporting that this is part of a forbearance agreement, and Debtor is awaiting the final documents.

The Parties agreed to a continuance to allow for the documentation to be completed.

### **Notice of Mortgage Payment Change**

On June 22, 2021, Creditor filed a Notice of Mortgage Payment Change. Commencing August 1, 2021, Debtor will be making mortgage payments of \$3,061.36. Docket Entry, Doc. (6).

### **July 20, 2021 Hearing**

At the hearing, counsel for Creditor reported that a loan modification is being worked out, and a continuance was requested so the documentation may be completed.

### **August 17, 2021 Hearing**

As of the court's drafting of this pre-hearing disposition no further documents updating the court have been filed.

At the hearing **xxxxxxx**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**  
-----

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 21, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

<b>The Objection to Confirmation of Plan is sustained.</b>
--

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. Debtor failed to provide business documents.
- B. Debtor failed to provide pay advices.
- C. Debtor failed to accurately complete the petition.

## **DISCUSSION**

Trustee's objections are well-taken.

## **Failure to File Documents Related to Business**

Debtor has failed to timely provide Trustee with business documents including:

- A. Questionnaire,
- B. Two years of tax returns,
- C. Six months of profit and loss statements,
- D. Six months of bank account statements, and
- E. Proof of license and insurance or written statement that no such documentation exists.

11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with Trustee. 11 U.S.C. § 521(a)(3). Without Debtor submitting all required documents, the court and Trustee are unable to determine if the Plan is feasible, viable, or complies with 11 U.S.C. § 1325.

## **Failure to Provide Pay Advices**

Debtor has not provided Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Debtor has failed to provide all necessary pay stubs. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

## **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to the Trustee, Debtor admitted at the Meeting of Creditors that there are two bank accounts with Bank of America but the Debtor only listed a checking account. Additionally, the Trustee points the court to Question #38 of Debtor's Schedule A/B which states that account receivables are "-unlikely to collect \$^k)" where Trustee is not certain what that means and why it is unlikely to be collectible. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

**Below is the court’s tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on August 2, 2021. By the court’s calculation, 15 days’ notice was provided. 14 days’ notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

<p><b>The Motion to Refinance is granted.</b></p>
---

The Motion to Refinance filed by Brandon Michael Garloff (“Debtor”) seeks court approval for Debtor to incur post-petition credit. Willamette Valley Bank (“Creditor”) has offered to refinance the mortgage in the amount of \$472,120.00, with an interest rate of 3.250%. Debtor’s monthly payment will be \$2,813.67 (an increase of \$128.28), which will realize a net savings over the 30 year period in the amount of \$64,522.54.

The Motion is supported by the Declaration of Brandon Michael Garloff. Dckt. 28. The Declaration affirms Debtor’s desire to obtain the post-petition financing and provides evidence of Debtor’s ability to pay this claim on the modified terms.

## **DISCUSSION**

According to the Estimated Refinance Statement, the Trustee is to receive \$53,800.00 and Debtor is to receive \$9,275.80 in proceeds. Trustee is uncertain as to how Debtor wants to move forward with this case and with the funds Trustee is to receive.

At the hearing ~~XXXXXXXX~~

~~\_\_\_\_\_ This post-petition financing is consistent with the Chapter 13 Plan in this case and with Debtor's ability to fund that Plan. There being no objection from the Chapter 13 Trustee or other parties in interest, and the Motion complying with the provisions of 11 U.S.C. § 364(d), the Motion to Refinance is granted.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~\_\_\_\_\_ Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~\_\_\_\_\_ The Motion to Refinance filed by Brandon Michael Garloff ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~\_\_\_\_\_ **IT IS ORDERED** that the court authorizes Brandon Michael Garloff to amend the terms of the loan with Willamette Valley Bank ("Creditor"), which is secured by the real property commonly known as 14 Hiller Ct., Woodland, California, on such terms as stated in the Modification Agreement filed as Exhibit 2 in support of the Motion (Dckt. 29).~~

~~\_\_\_\_\_ **IT IS FURTHER ORDERED** that the \$53,800.00 received by Trustee~~

~~XXXXXXXXXXXX~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2021. By the court's calculation, 27 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

<p><b>The Motion to Sell Property is granted.</b></p>
---

The Bankruptcy Code permits Mitrelle Daehn, the Chapter 13 Debtor ("Movant") to sell property under the confirmed plan after a noticed hearing. 11 U.S.C. §§ 363 and 1303. Here, Movant proposes to sell the real property commonly known as 5053 Buffwood Way, Sacramento, California ("Property").

The proposed purchaser of the Property is Harriet and Rafus Jefferson, and the terms of the sale are:

- A. Purchase price of \$420,000.00.
- B. Buyer and Seller to split the following 50/50: escrow fee, county transfer fee, and city transfer fee. Buyer to pay for the updated one-year home warranty plan. Seller to pay for owner's title insurance policy.
- C. Buyer to pay up to \$2,000 specifically towards, if any, VA required repairs for the loan to close, and will provide these funds to seller

through escrow settlement process.

D. Stove is included in the sale.

Trustee filed a Non-Opposition on August 9, 2021 noting that the sale commits sufficient funds to pay off all claim at 100%. Dckt. 25. Trustee requests that Order granting the sale include the following:

Debtor's confirmed plan (DN 2) to be paid in full at 100% and proceeds are to be disbursed directly to the Trustee in an amount to pay all creditors in full pursuant to the Trustee's demand. Any excess funds over and above the amount in the Trustee's demand can be disbursed directly to the debtor.

*Id.*

## DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **XXXXXXXXXXXXXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the sale will pay off all claims at 100%.

Movant has estimated that a five (5) percent broker's commission from the sale of the Property will equal approximately \$19,500.00, with Seller's broker receiving \$8,400.00 and Buyer's broker receiving \$10,500.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than five (5) percent commission.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Mitrelle Daehn, the Chapter 13 Debtor, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Mitrelle Daehn, the Chapter 13 Debtor, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Harriet and Rafus Jefferson or nominee ("Buyer"), the Property commonly known as 5053 Buffwood Way, Sacramento, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$420,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 23, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real



estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.

- C. The Chapter 13 Debtor is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Chapter 13 Debtor is authorized to pay a real estate broker's commission in an amount not more than five (5) percent of the actual purchase price upon consummation of the sale. The five (5) percent commission shall be divided with the Chapter 13 Debtor's broker, Realty One Group, receiving \$8,400.00 and Buyer's broker receiving \$10,500.00.
- E. No proceeds of the sale, including any commissions, fees, or other amounts, shall be paid directly or indirectly to the Chapter 13 Debtor. Within fourteen days of the close of escrow, the Chapter 13 Debtor shall provide the Chapter 13 Trustee with a copy of the Escrow Closing Statement. Any monies not disbursed to creditors holding claims secured by the property being sold or paying the fees and costs as allowed by this order, shall be disbursed to the Chapter 13 Trustee directly from escrow.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

-----

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on July 21, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----  
-----.

<p><b>The Objection to Confirmation of Plan is sustained.</b></p>
---

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that:

- A. The Chapter 13 debtor, Sharron Renee Wingham ("Debtor"), fails to provide for creditors with secured claims and modified a priority claim.

## DISCUSSION

Trustee's objections are well-taken.

### Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor's Plan fails to provide for Shellpoint Mortgage listed on Schedule D. Trustee points the court to NewRez LLC Proof of Claim 4-1 filed on July 20, 2021 which

reflects the amount necessary to cure any default as \$4,700.20. Thus, Trustee argues this claim should be listed as a Class 1. Additionally, Debtor failed to list U.S. Department of Housing and Urban Development in her plan or schedules. Trustee points the court to Proof of Claim 1-1 filed on June 4, 2021 for a secured claim in the amount of \$43,406.09.

Trustee arguing that there is a conflict where Debtor is providing for the HOA secured claim but has failed to provide for the 1<sup>st</sup> and 2<sup>nd</sup> mortgages.

According to Trustee, the Nonstandard Provisions of debtor's plan states: "This modifies Section 3.12 (c) of the plan in that Mr. Mancy Gant agrees to pay outside of the plan, the stipulated amount of \$1,700.43 to the Franchise Tax Board at a rate of \$50.00 per month until fully paid." Trustee argues that the Franchise Tax Board claim should be listed in Class 5 of the plan as it is not clear if the creditor agrees to this treatment as no stipulation has been filed with the Court.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Objection is sustained, and the Plan is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, David Cusick ("Trustee"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Confirmation of the Plan is sustained, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the Objection. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on July 20, 2021. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection. At the hearing -----

-----.

<p><b>The Objection to Confirmation of Plan is overruled.</b></p>
---

THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED CERTIFICATES, SERIES 2004-BC4, its successors and/or assignees ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that:

- A. The Chapter 13 debtor, Richey Deanne Harrison ("Debtor"), has impermissibly modified Creditor's claim secured by principal residence.
- B. Debtor's plan is not feasible.

## DISCUSSION

Creditor's objections are well-taken.

## Modification of an Obligation Secured Only by Principal Residence

Creditor argues that Debtor's Plan was not filed in good faith and is an improper modification of a claim secured only by a security interest in real property that is Debtor's principal residence. Creditor has filed Proof of Claim 6-1 indicating a secured claim in the amount of \$139,826.29, secured by a deed of trust against the property commonly known as 6700 Blue Duck Way, Sacramento, California. Debtor's Schedules indicate that this is Debtor's primary residence. Debtor alleges in the Plan that the arrears owed to Secured Creditor are in the amount of \$11,000.00 while in fact the actual arrears owed are in the amount of \$16,210.44. Proof of Claim 6-1. This modification violates 11 U.S.C. § 1322(b)(2), which prohibits the modification of an obligation secured only by Debtor's residence.

Because the Plan expressly provides that the amount of any claim, including the arrearage, is the amount stated in the proof of claim, or order of the court, if any, the arrearage is the amount asserted by Debtor. Plan, ¶ 3.02; Dckt. 3.

Debtor filed an Opposition on August 3, 2021 agreeing with Creditor that the plan payments must be increased and requests that the order confirming the plan include language adjusting the plan payments to \$2,856.40. Dckt. 21. Debtor also asserts that there are some question as to whether the forbearance granted to Debtor by Creditor prior to the filing of case should be ignored in Creditor's Proof of Claim but does not contest that the plan payment must be increased.

## Failure to Afford Plan Payment / Cannot Comply with the Plan

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). Creditor argues that Debtor has not committed all of his disposable income to the Plan, namely Debtor's social security income. Adding that Debtor has also failed to provide for income tax on Schedule J. Thus, it is unclear whether Debtor can increase the plan payment to cure Creditor total arrearage.

In the Opposition, Debtor argues that the Ninth Circuit held in *In re Welsh*, 711 F.3d 1120 at 1135, (9th Cir. 2013) that a debtor may but is not required to use social security income to fund a Chapter 13 plan. In that case, the Ninth Circuit affirmed the Bankruptcy Appellate Panel's decision finding that social security income is not considered part of a debtor's "current monthly income," (or disposable income) where Congress through the Social Security Act explicitly excludes such benefits from the calculation of disposable income and thus Debtor's exclusion of such cannot constitute a lack of good faith. *Drummond v. Welsh (In re Welsh)*, 711 F.3d 1120, 1132 (9th Cir. 2013).

~~Thus, Debtor providing for increasing the plan payment addressing Creditor's arrearage, the Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.~~

~~The court shall issue an order substantially in the following form holding that:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Objection to the Chapter 13 Plan filed by THE BANK OF NEW~~

~~YORK MELLON FKA THE BANK OF NEW YORK AS TRUSTEE FOR THE  
CERTIFICATEHOLDERS OF CWABS, INC., ASSET BACKED  
CERTIFICATES, SERIES 2004-BC4, its successors and/or assignees (“Creditor”)  
holding a secured claim having been presented to the court, and upon review of  
the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~\_\_\_\_\_ **IT IS ORDERED** that the Objection is overruled, and Richey Deanne  
Harrison’s (“Debtor”) Chapter 13 Plan filed on June 3, 2021 and as amended to  
the following:~~

~~\_\_\_\_\_~~  
~~\_\_\_\_\_ Plan payments to be \$2,856.40~~

~~\_\_\_\_\_ is confirmed. Counsel for Debtor shall prepare an appropriate order confirming  
the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for  
approval as to form, and if so approved, the Chapter 13 Trustee will submit the  
proposed order to the court.~~

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice NOT Provided. No Proof of Service was filed with the court.

At the hearing **xxxxxxx**

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Avoid Judicial Lien is <b>xxxxx</b>.</b>
---

This Motion requests an order avoiding the judicial lien of Employment Development Department ("Creditor") against property of the debtor, Tara L. Naisbitt ("Debtor") commonly known as 4406 Myrtle Avenue, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,907.70. Exhibit C, Dckt. 37. An abstract of judgment was recorded with Sacramento County on July 9, 2019, that encumbers the Property. *Id.*

Pursuant to Debtor's Amended Schedule A, the subject real property has an approximate value of \$325,000.00 as of the petition date. Dckt. 25. The unavoidable consensual liens that total \$293,279.81 as of the commencement of this case are stated on Debtor's Amended Schedule D. Dckt. 25. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140 in the amount of \$75,000.00 on Amended Schedule C. Dckt. 25.

~~After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).~~

~~ISSUANCE OF A COURT-DRAFTED ORDER~~

~~An order substantially in the following form shall be prepared and issued by the court:~~

~~Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.~~

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Tara L. Naisbitt (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,~~

~~**IT IS ORDERED** that the judgment lien of Employment Development Department, California Superior Court for Sacramento County Case No. 34-2019-90016904, recorded on July 9, 2019, Document No. 201907090478, with the Sacramento County Recorder, against the real property commonly known as 4406 Myrtle Avenue, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.~~



**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 21, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days' notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days' notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Modified Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtor, Tara L. Naisbitt ("Debtor") seeks confirmation of the Modified Plan to provide for secured claims filed by the County of Sacramento (for a septic tank and for past due utilities) and the secured claim of Employment Development Department. Declaration, Dckt. 28. The Modified Plan provides for plan payments of \$2,049.00 commencing August 2021 and through the remaining months of the 60-month plan, and a 22 percent dividend to unsecured claims totaling \$147,902.40. Modified Plan, Dckt. 30. 11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

### CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 3, 2021. Dckt. 39. Trustee opposes confirmation of the Plan on the basis that:

- A. Debtor is paid ahead under the proposed modified Plan.
- B. Debtor provides for two separate supplemental claims in Class 2(A) by combining them and proposing one monthly dividend.

- C. Plan relies on separate motions not yet filed.
- D. Total attorney's fees indicated are incorrect.
- E. Debtor includes an expense for a projected vehicle loan where no motion to incur new debt has been filed.

## **DISCUSSION**

### **Amounts Actually Paid**

Debtor is paid ahead under the proposed modified Plan by \$1,800.00. Section 7 of the modified Plan proposes plan payments of \$34,200.00 total paid in through July 2021, where Debtor has actually paid to date a total of \$36,000.00, a difference of \$1,800.00.

Trustee would have no opposition if the Order Confirming provided language indicating the total amount paid in through month 20 (July 2021) is \$36,000.00, with payments beginning in August 2021 of \$2,049.00 for the remaining months of the 60 month plan.

### **Debtor's Reliance on Motion to Avoid Lien and Objection to Claim**

A review of Debtor's Plan shows that it relies on the court avoiding the judicial lien of Employment Development Department. Debtor has filed this motion and has been set to be heard the same date and time as the instant motion.

Debtor's Motion to Avoid the Lien of EDD was granted, and the lien was avoided in its entirety. And this part of Trustee's objection is thus resolved in Debtor's favor.

Debtor has failed to file the Objection to Claim of County of Sacramento, Claim #25, however. Nor has creditor filed an amended claim. Thus, without the court valuing the claim, the Plan may be not feasible. 11 U.S.C. § 1325(a)(6).

### **Attorney's Fees**

According to Trustee, \$2,575.00 in attorney's fees have been disbursed. However, Section 3.05 of the proposed modified Plan indicates Debtor paid \$1,425.00 to their attorney prior to filing the case, with \$1,575.00 to be paid through the Plan. Trustee does not object to a correction in the order confirming.

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Schedule J budgets \$289.00 per month for a car payment, which is an increase over Debtor's prior Schedule J filed November 4, 2019, where this amount was reflected as \$0.00. Trustee then points the court to Debtor's Declaration, which states that "Additionally, I have included a projected amount for a vehicle loan that I will be filing as I need a different vehicle for work. Currently, my vehicle needs repairs that exceed the value." Yet, Debtor provides no other information

related to needed repairs and has failed to file a motion to incur new debt. Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

At the hearing **xxxxxxx**

~~The Modified Plan does / does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is not confirmed.~~

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the debtor, Tara L. Naisbitt ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Modified Plan is **xxxxx**.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 29, 2021. By the court's calculation, 19 days' notice was provided. 28 days' notice is required.

The Motion to Amend Order Granting Motion to Sell has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Amend Order Granting Motion to Sell is granted.</b></p>
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The Chapter 13 debtors, William Matthew Freeman and Carla Elise Tavormina Freeman ("Debtor"), request the court amend the order approving the sale of real property located at 303 West J. Street, Benicia, California.

On August 5, 2021, Trustee filed a Non-Opposition stating that Trustee does not oppose proceeds going to Debtor, and notes that the Plan does not call for funds nor is there a modified plan pending or expected, and adds that the plan vested the estate on Debtor upon confirmation. Dckt. 126.

On July 1, 2021 the court granted Debtor's Motion to Sell with the order authorizing Trustee to treat the proceeds as follows:

- E. From the sales proceeds, after payment of the above authorized costs, property taxes, liens and other non-real estate commission amounts, the sum of \$100,000.00 shall be disbursed directly from escrow to the Chapter 13 Debtors, which is the \$100,000.00 homestead exemption claimed in this case with respect to the Property.
- F. All net sales proceeds after payment of the above amounts,

including the \$100,000.00 to the Chapter 13 Debtors, shall be disbursed directly to the Chapter 13 Trustee to be held subject to further order of the court. Any rights and interests of the Chapter 13 Debtors in the Property shall attach to the net proceeds of the sale held by the Chapter 13 Trustee.

Dckt. 120. Debtor seeks amending the order to provide for the proceeds directly to Debtor on the grounds that the Debtor has no pending modified plan and Trustee is not seeking to modify the plan on the basis of the sale.

Debtor requests the court amend the order to be amended as follows,

E. From the sales proceeds, after payment of the above authorized costs, property taxes, liens and other non-real estate commission amounts, the net proceeds shall be disbursed directly from escrow to the Chapter 13 Debtors.

and for the order amending to remove Paragraph F. Debtor, in the alternative, requests that if Trustee is in receipt of the funds from the sale that the Trustee turnover all proceeds from the sale of the home to the Debtors.

Trustee having filed a Non-Opposition on August 5, 2021 with no mention of having the funds, the court proceeds as to provide for the request of amending the order.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Amend Order Granting Motion to Sell filed by the Chapter 13 debtors, William Matthew Freeman and Carla Elise Tavormina Freeman (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, the Order Confirming the Sale is amended to provide as follows:

E. From the sales proceeds, after payment of the above authorized costs, property taxes, liens and other non-real estate commission amounts, the net proceeds shall be disbursed directly from escrow to the Chapter 13 Debtors.

**IT IS FURTHER ORDERED** that Paragraph F of the Order Confirming the Sale is deleted.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee and Office of the United States Trustee on June 3, 2021. By the court's calculation, 75 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Allowance of Professional Fees is granted.**

Mark J. Hannon, the Attorney ("Applicant") for Victor Cruz Chavez and Olvera Montserrat, the Chapter 13 Debtor ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period April 4, 2020, through June 3, 2021. The order of the court approving employment of Applicant was entered on April 4, 2020. Dckt. 53. Applicant requests fees in the amount of \$2,000.00 and costs in the amount of \$0.00.

### **Review of Minimum Pleading Requirements for a Motion**

The Supreme Court requires that the motion itself state with particularity the grounds upon which the relief is requested. FED. R. BANKR. P. 9013. The Rule does not allow the motion to merely be a direction to the court to "read every document in the file and glean from that what the grounds should be for the motion." That "state with particularity" requirement is not unique to the Bankruptcy Rules and is also found in Federal Rule of Civil Procedure 7(b).

Consistent with this court's repeated interpretation of Federal Rule of Bankruptcy Procedure

9013, the bankruptcy court in *In re Weatherford*, applied the general pleading requirements enunciated by the United States Supreme Court to the pleading with particularity requirement of Bankruptcy Rule 9013. *See* 434 B.R. 644, 646 (N.D. Ala. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007)). The *Twombly* pleading standards were restated by the Supreme Court in *Ashcroft v. Iqbal* to apply to all civil actions in considering whether a plaintiff had met the minimum basic pleading requirements in federal court. *See* 556 U.S. 662 (2009).

Federal Rule of Bankruptcy Procedure 9013 incorporates the “state with particularity” requirement of Federal Rule of Civil Procedure 7(b), which is also incorporated into adversary proceedings by Federal Rule of Bankruptcy Procedure 7007. Interestingly, in adopting the Federal Rules of Civil Procedure and of Bankruptcy Procedure, the Supreme Court endorsed a stricter, state-with-particularity-the-grounds-upon-which-the-relief-is-based standard for motions rather than the “short and plain statement” standard for a complaint.

Law and motion practice in bankruptcy court demonstrates why such particularity is required in motions. Many of the substantive legal proceedings are conducted in the bankruptcy court through the law and motion process. These include sales of real and personal property, valuation of a creditor’s secured claim, determination of a debtor’s exemptions, confirmation of a plan, objection to a claim (which is a contested matter similar to a motion), abandonment of property from the estate, relief from the automatic stay, motions to avoid liens, objections to plans in Chapter 13 cases (akin to a motion), use of cash collateral, and secured and unsecured borrowing.

The court in *Weatherford* considered the impact to other parties in a bankruptcy case and to the court, holding,

The Court cannot adequately prepare for the docket when a motion simply states conclusions with no supporting factual allegations. The respondents to such motions cannot adequately prepare for the hearing when there are no factual allegations supporting the relief sought. Bankruptcy is a national practice and creditors sometimes do not have the time or economic incentive to be represented at each and every docket to defend against entirely deficient pleadings. Likewise, debtors should not have to defend against facially baseless or conclusory claims.

434 B.R. at 649–50; *see also In re White*, 409 B.R. 491, 494 (Bankr. N.D. Ind. 2009) (holding that a proper motion must contain factual allegations concerning requirements of the relief sought, not conclusory allegations or mechanical recitations of the elements).

The courts of appeals agree. The Tenth Circuit Court of Appeals rejected an objection filed by a party to the form of a proposed order as being a motion. *St. Paul Fire & Marine Ins. Co. v. Continental Casualty Co.*, 684 F.2d 691, 693 (10th Cir. 1982). The Seventh Circuit Court of Appeals refused to allow a party to use a memorandum to fulfill the pleading with particularity requirement in a motion, stating:

Rule 7(b)(1) of the Federal Rules of Civil Procedure provides that all applications to the court for orders shall be by motion, which unless made during a hearing or trial, “shall be made in writing, [and] *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought.” The standard for “particularity” has been determined to mean “reasonable specification.”

*Martinez v. Trainor*, 556 F.2d 818, 819–20 (7th Cir. 1977) (citing 2-A JAMES WM. MOORE ET AL., MOORE’S FEDERAL PRACTICE ¶ 7.05 (3d ed. 1975)).

Not stating with particularity the grounds in a motion can be used as a tool to abuse other parties to a proceeding, hiding from those parties grounds upon which a motion is based in densely drafted points and authorities—buried between extensive citations, quotations, legal arguments, and factual arguments. Noncompliance with Federal Rule of Bankruptcy Procedure 9013 may be a further abusive practice in an attempt to circumvent Bankruptcy Rule 9011 by floating baseless contentions to mislead other parties and the court. By hiding possible grounds in citations, quotations, legal arguments, and factual arguments, a movant bent on mischief could contend that what the court and other parties took to be claims or factual contentions in the points and authorities were “mere academic postulations” not intended to be representations to the court concerning any actual claims and contentions in the specific motion or an assertion that evidentiary support exists for such “postulations.”

### **Grounds Stated in Motion**

Counsel does not include any details of the hours worked, simply stating the following:

Counsel for the Debtor hereby moves the court for an allowance of fees in the sum of \$2,000.00 for representing the debtors in this Chapter 13 Proceeding.

Motion, at 1. In his Declaration, Applicant declares that:

2) I am seeking this reasonable fee and request permission of the court to submit this petition for fees without having to prepare and submit a time sheet, which usually would be far in excess of \$2,000,00.

Declaration, at 1.

That “ground” is merely a conclusion of law by Applicant. Presumably, Applicant believed that the court would make those conclusions, but the “grounds” cannot merely state the anticipated conclusions.

Applicant is reminded that “[f]ailure of counsel or of a party to comply with these [Local Bankruptcy] Rules . . . may be grounds for imposition of any and all sanctions authorized by statute or rule within the inherent power of the Court, including without limitation, **dismissal of any action**, entry of default, finding of contempt, imposition of monetary sanctions or attorneys’ fees and costs, and other lesser sanctions.” LOCAL BANKR. R. 1001-1(g) (emphasis added).

### **Trustee’s Non-Opposition**

Trustee notes that Applicant does not provide the details of the hours worked but believes that the normal time spent on the matters done since Applicant substituted in would exceed the \$2,000.00 being requested. Trustee notes that an amended plan, a motion to confirm, and the instant motion are the matters that have been prepared since the substitution.



## DISCLOSURE OF COMPENSATION

On January 28, 2020, Applicant filed a Supplemental Disclosure of Compensation in which he states that he has agreed to accept \$4,000.00 in fees for representing the Debtor. Dckt. 38. He further states that prior to filing the Disclosure, Applicant received \$2,000 from Debtor. *Id.*

Applicant now requests that the court allow him only \$2,000 in fees for this case. Motion, Dckt. 70. As Applicant notes in his Declaration, fees for such representation are commonly in excess of that amount. As provided in Local Bankruptcy Rule 2016-1, consumer counsel in Chapter 13 cases may elect to receive a no-look fee of \$4,000 in a bankruptcy case. Here, Applicant requests only one-half that amount.

Applicant having been paid \$2,000 by Debtor for representation in this case, the court allows that amount as fees and expenses in this case, and authorizes Applicant to apply those monies to the fees herein allowed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Mark J. Hannon (“Applicant”), Attorney for Victor Cruz Chavez and Olvera Montserrat, Chapter 13 Debtor (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that as provided in Local Bankruptcy Rule 2016-1 and Federal Rule of Bankruptcy Procedure 2016, the court allows Mark J. Hannon, as counsel for the Debtor, legal fees and costs for such representation.

**IT IS FURTHER ORDERED** that Applicant is authorized to apply the \$2,000.00 he received from Debtor for the legal representation in this case; see Supplemental Disclosure of Compensation, Dckt. 38; for payment in full for his fees allowed in this case.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 8, 2021. By the court's calculation, 40 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(9); LOCAL BANKR. R. 3015-1(d)(1).

The Motion to Confirm the Amended Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

<p><b>The Motion to Confirm the Amended Plan is <span style="color: red;">XXXXX</span>.</b></p>
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The debtors, Marivic G. Garcia and Elbert E. Garcia, Jr. ("Debtor"), seek confirmation of the Amended Plan. The Amended Plan provides for:

1. monthly plan payments of \$1,427.00 for the first three months,
2. followed by \$1,677.00 for months 4 and 5,
3. Then \$4,107.00 for the remaining 55 months of the plan, and
4. a 70 percent to unsecured claims totaling \$3,720.48.

Amended Plan, Dckt. 54. 11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

## CHAPTER 13 TRUSTEE'S OPPOSITION

The Chapter 13 Trustee, David Cusick ("Trustee"), filed an Opposition on August 3, 2021. Dckt. 57. Trustee opposes confirmation of the Plan on the basis that:

- A. Plan payments may not be feasible.
- B. Debtor's Plan is overextended.
- C. Debtor is delinquent in plan payments.

## **DISCUSSION**

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee, Debtor admitted at the Meeting of Creditors that they have been making direct mortgage payments to creditor Select Portfolio Servicing for the months of February and March 2021. Where the Plan provides that Debtor will pay the first five months and then Trustee is to make the step-up payments, Debtor has failed to provide any proof that they have made the payments to the creditor.

Moreover, Trustee argues that Debtor's plan is not feasible where the step-up plan payment is \$4,107.00 but \$4,820.09 is needed to cover the Class 1 mortgage payments.

Lastly, Trustee requested that Debtor remove ownership expenses and although Debtor filed an Amended Schedule J on July 8, 2021, Debtor removed one expense in the amount of \$2,430.23 but failed to remove the expense of \$1,309.18. See Schedule J, Dckt. 55.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Failure to Comply With Basic Requirements of the Chapter 13 Plan and Correction**

On February 8, 2021, Debtor filed the original Chapter 13 Plan in this case. In it, Select Portfolio Servicing was listed as having a Class 1 Claim with a \$68,000 pre-petition arrearage, which was to be cured through the Plan with \$1,333.33 a month payments, plus the regular \$2,879.78 current monthly mortgage payment. Plan, ¶ 3.07; Dckt. 15.

On April 21, 2021, Debtor filed the First Amended (titled "Modified") Chapter 13 Plan. Dckt. 35. For the Class 1 secured claims, Select Portfolio Servicing continues to be listed as having a secured claim, now with a pre-petition arrearage of \$64,840.92, which is to be cured with monthly payments of \$1,080.68 and a current monthly mortgage payment of \$2,430.23. Amended Plan, ¶ 3.07.

On July 8, 2021, Debtor filed the Second Amended (Modified) Chapter 13 Plan. Dckt. 54. Again, for the Class 1 secured claims, Select Portfolio Servicing continues to be listed as having a secured claim, now with a pre-petition arrearage of \$64,840.92, which is to be cured with monthly payments of \$1,080.68 and a current monthly mortgage payment of \$2,430.23. Second Amended Plan, ¶ 3.07.

Though the Class 1 claim of Select Portfolio Servicing has a large five figure pre-petition default, the Additional Provisions, Section 7 of the Plans, provides for Debtor to pay the arrearage

payment and current monthly mortgage payment on the defaulted loans outside of the Chapter 13 Plan. This directly conflicts with the requirements of Class 1 Claim treatment stated in the Plan.

No secured claim has been filed by “Select Portfolio Servicing.” Proof of Claim 1-1 has been filed by Wilmington Savings Fund Society, FSB, as Trustee of CSMC 2017-RPL4 Trust. There is a \$64,840.92 arrearage stated for this \$475,664.24 claim. POC 1-1, §§ 7, 9.

In the Additional Provisions of the Second Amended (Modified) Plan, Debtor states that beginning in month six, Debtor’s “mortgage payment shall be made to “Select Portfolio Servicing” through the Plan. Second Amended Plan, § 7, ¶ 3.07.

### **Failure to Complete Plan Within Allotted Time**

Debtor is in material default under the Plan because the Plan will complete in more than the permitted sixty months. According to the Chapter 13 Trustee, the Plan will complete in 106 months due to claims being filed for amounts higher than Debtor scheduled. The Plan exceeds the maximum sixty months allowed under 11 U.S.C. § 1322(d).

### **Delinquency**

The Chapter 13 Trustee asserts that Debtor is \$3,357.00 delinquent in plan payments, which represents approximately one month of the \$4,107.00 plan payment. Delinquency indicates that the Plan is not feasible and is reason to deny confirmation. *See* 11 U.S.C. § 1325(a)(6).

It appears that Debtor has substantial deficiencies with the prosecution of this case and proposing of a confirmable plan. Though having a \$64,840.92 pre-petition arrearage on the Wilmington Savings Fund Society, FSB, as Trustee of CSMC 2017-RPL4 Trust (who the Debtor repeatedly misidentifies in the Plans filed on February 8, 2021, April 21, 2021, and July 8, 2021, notwithstanding Proof of Claim 1-1 being filed on March 8, 2021), Debtor presented a Plan, twice, with conflicting terms and failing to be adequately funded to pay the required Class 1 claims.

In the Motion to Confirm, Debtor provides very little particularity (Fed. R. Bankr. P. 9013) as to why relief may properly be granted or why it would be proper for a debtor with a \$60,000+ pre-petition arrearage to just promise to pay that outside of the plan having had to seek extraordinary bankruptcy relief to stop the foreclosure from occurring due to the substantial pre-petition defaults. (The non-particular motions and perfunctory declarations of Debtor do not provide information as to why the Chapter 13 bankruptcy case was filed, but the multi-year, large six figure default appears the most likely.)

As noted above, the motions filed by Debtor do not state grounds with particularity upon which relief may be granted by the court. The most recent states:

- A. Debtor filed bankruptcy and the First Meeting of Creditors was concluded. Motion, ¶ 1; Dckt. 50.
- B. A copy of the “Second Modified Plan” has been sent to creditors and Debtor seeks to confirm the “Second Modified Plan.” *Id.*, ¶ 2.

- C. The “amended plan” provides for payments of \$1,427 for the first three months, then \$1,577 for months 4 and 5, and the \$4,107 for the remaining 55 months of the plan. Additionally, that there should be a 70% dividend for creditors holding general unsecured claims. *Id.*, ¶ 3.
- D. The “amended plan” complies with the Bankruptcy Code. *Id.* ¶ 4.

Even if the court were to assume that all of the “well pleaded facts and grounds were true and accurate,” the above does not state grounds for confirmation of a plan as required by 11 U.S.C. §§ 1322, 1323, and 1325.

Debtor’s declarations provide little personal knowledge testimony as required under Federal Rules of Evidence 601 et seq. The two latest declarations one for Debtor’s counsel and the other for Debtor Marivic state (appearing to be the same declaration form with different names for the declarants typed in):

- A. The “Second Modified Plan” has been filed. Declarations, ¶¶ 1; Dckts. 52, 53.
- B. The proposed plan provides for 70% of the allowed unsecured claims. *Id.* ¶¶ 2.
- C. Amended schedules I and J have been filed. *Id.* ¶¶ 4.
- D. The Debtor’s conclusions of law and personal findings of fact that the Plan has been proposed in good faith and the bankruptcy petition was filed in good faith. *Id.* ¶¶ 6.

The Second Amended (Modified) Plan requires in month 6 for Debtor to increase the Plan payment to \$4,107. The cash flow of the plan appears to be as follows:

Monthly Plan Payment Beginning in Month 6 of the Plan	\$4,107.00	
Chapter 13 Trustee Fees (10%)	(\$401.70)	
Debtor’s Counsel’s Fees of \$1,000	(\$17.00)	
Class 1 Chase Mortgage Claim, Current Mortgage	(\$1,309.18)	
Class 1 Wilmington Savings Fund Society, FSB, as Trustee		
Arrearage Payment	(\$1,080.68)	
Current Post-Petition Payment	(\$2,430.23)	
Class 5 Priority FTB Unsecured Claim of \$2,812.78	(\$47.00)	

Class 7 General Unsecured Claims \$2,820.03 (Claims Filed) at 70%	(\$33.00)	
	=====	
	(\$1,211.79)	Over/(Under) Funding of Plan

No Proof of Claim has been filed (either by the creditor or the Debtor) for the Class 1 secured claim for which Chase Mortgage is identified as the creditor. If such claim exists, is not in default, and qualifies for Class 4 Plan treatment, then it may be a claim that can be paid directly by Debtor outside of the Plan. However, the Second Amended (Modified) Plan as written requires it to be paid by the Trustee through the Plan. Thus, the Plan as proposed is underfunded. The court notes that under Amended Schedule J the \$1,309.18 payment is included as a monthly expense, so it appears Debtor has the ability to make the payment, but just does not properly fund the Plan as written.

The Amended Plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Amended Chapter 13 Plan filed by the debtor, Marivic G. Garcia and Elbert E. Garcia, Jr. (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Confirm the Amended Plan is denied, and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 12, 2021. By the court's calculation, 36 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion for Approval of Compromise is granted.</b></p>
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Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor, ("Movant") requests that the court approve a compromise and settle competing claims and defenses with NATIONAL GENERAL PREMIER INSURANCE COMPANY ("Settlor"). The claims and disputes to be resolved by the proposed settlement are an underinsured motorist claim involving debtor Karen Furlong.

Movant and Settlor have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit B in support of the Motion, Dckt. 47):

- A. Settlement amount of \$68,000.00.
- B. In exchange, Debtor is to provide a release of all claims.

Trustee does not oppose the motion as long as the Order includes that the portion of the settlement in the amount of \$21,000.86 is paid directly to the Trustee. Dckt. 57.

## **DISCUSSION**

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in collection;
3. The complexity of the litigation involved and the expense, inconvenience, and delay necessarily attending it; and
4. The paramount interest of the creditors and a proper deference to their reasonable views.

*In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

### **Probability of Success**

Movant argues success is uncertain because if the settlement is not accepted, the claim would proceed to arbitration which would require significant discovery, the filing of several substantive motions, and Debtor's participation at all the various stages. Moreover, expenses related to arbitration would likely result in a lesser amount to Debtor than what she would receive under the current settlement.

### **Difficulties in Collection**

Movant does not address this factor.

### **Expense, Inconvenience, and Delay of Continued Litigation**

Movant argues that further litigation would be costly and delay possible payment to creditors. Adding that if the settlement is not approved the case could take up 15 months to complete.

### **Paramount Interest of Creditors**

According to Movant, the settlement reduces the amount of time required for funds to be distributed to creditors.

### **Consideration of Additional Offers**

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant to purchase or prosecute the property, claims, or interests



of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because Debtor will receive \$68,000.00 which provides additional funds to be distributed to creditors. The Motion is granted.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor, (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion for Approval of Compromise between Movant and NATIONAL GENERAL PREMIER INSURANCE COMPANY (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit B in support of the Motion (Dckt. 47).

**Posted as a Tentative In Light of it Being  
Related to the Motion to Approve Compromise  
and to Confirm Whether Payment is Made Through the Trustee or  
Directly by the Settling Party  
No Appearance by Applicant Required**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on July 13, 2021. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(6) (requiring twenty-one days' notice when requested fees exceed \$1,000.00); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for Allowance of Professional Fees is granted.</b>
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Kevin L. Elder of Penny & Associates, the Non-Bankruptcy Attorney ("Applicant") for

Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor (“Client”), makes a Second and Final Request for the Allowance of Fees and Expenses in this case.

Fees are requested for the period December 23, 2020 through June 25, 2021. The Motion states with particularity (Fed. R. Bankr. P. 9013) states that Debtor signed a contingency fee agreement on March 20 2018, with Applicant to represent Debtor is pursuing claims relating to injuries sustained in a motor vehicle accident on March 14, 2018.

Debtor commenced this bankruptcy case on September 19, 2018, six months after the contingent fee agreement was entered into by Debtor. Debtor listed the claim arising out of the vehicle accident on Schedule A/B. Dckt. 1 at 16. On Schedule C Debtor claimed a \$30,000 exemption in this claim. *Id.* at 19.

Applicant requests fees in the amount of \$22,666.67 and costs in the amount of \$337.68.

Trustee does not oppose the requested fees. Dckt. 55.

## **APPLICABLE LAW**

### **Reasonable Fees**

A bankruptcy court determines whether requested fees are reasonable by examining the circumstances of the attorney’s services, the manner in which services were performed, and the results of the services, by asking:

- A. Were the services authorized?
- B. Were the services necessary or beneficial to the administration of the estate at the time they were rendered?
- C. Are the services documented adequately?
- D. Are the required fees reasonable given the factors in 11 U.S.C. § 330(a)(3)?
- E. Did the attorney exercise reasonable billing judgment?

*In re Garcia*, 335 B.R. at 724 (citing *In re Mednet*, 251 B.R. at 108; *Leichty v. Neary (In re Strand)*, 375 F.3d 854, 860 (9th Cir. 2004)).

### **Lodestar Analysis**

For bankruptcy cases in the Ninth Circuit, “the primary method” to determine whether a fee is reasonable is by using the lodestar analysis. *Marguiles Law Firm, APLC v. Placide (In re Placide)*, 459 B.R. 64, 73 (B.A.P. 9th Cir. 2011) (citing *Yermakov v. Fitzsimmons (In re Yermakov)*, 718 F.2d 1465, 1471 (9th Cir. 1983)). The lodestar analysis involves “multiplying the number of hours reasonably expended by a reasonable hourly rate.” *Id.* (citing *In re Yermakov*, 718 F.2d at 1471). Both the Ninth Circuit and the Bankruptcy Appellate Panel have stated that departure from the lodestar

analysis can be appropriate, however. *See id.* (citing *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 960, 961 (9th Cir. 1991) (holding that the lodestar analysis is not mandated in all cases, thus allowing a court to employ alternative approaches when appropriate); *Digesti & Peck v. Kitchen Factors, Inc. (In re Kitchen Factors, Inc.)*, 143 B.R. 560, 562 (B.A.P. 9th Cir. 1992) (stating that lodestar analysis is the primary method, but it is not the exclusive method)).

### **Reasonable Billing Judgment**

Even if the court finds that the services billed by an attorney are “actual,” meaning that the fee application reflects time entries properly charged for services, the attorney must demonstrate still that the work performed was necessary and reasonable. *In re Puget Sound Plywood*, 924 F.2d at 958. An attorney must exercise good billing judgment with regard to the services provided because the court’s authorization to employ an attorney to work in a bankruptcy case does not give that attorney “free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery,” as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat’l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) (“Billing judgment is mandatory.”). According to the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

- (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
- (b) To what extent will the estate suffer if the services are not rendered?
- (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*In re Puget Sound Plywood*, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that Applicant’s services for the Estate include representing Debtor in litigation related to a motor vehicle accident. The court finds the services were beneficial to Client and the Estate and were reasonable.

### **FEES AND COSTS & EXPENSES REQUESTED**

#### **Contingency Fee: Litigation**

Applicant computes the fees for the services provided as a percentage of the monies recovered for Client. Applicant represented Client in litigation pursuing claims relating to injuries sustained in a motor vehicle accident, for which Client agreed to a contingent fee of 33.3% of the gross. In approving the employment of applicant, the court approved the contingent fee, subject to further review pursuant to 11 U.S.C. § 328(a). \$68,000.00 of net monies (exclusive of these requested fees and costs) was recovered for Client.

### **Costs & Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$337.68 pursuant to this application.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
Medical Costs		\$137.68
Postage		\$200.00
		\$0.00
		\$0.00
<b>Total Costs Requested in Application</b>		<b>\$337.68</b>

### **FEES AND COSTS & EXPENSES ALLOWED**

#### **Fees**

#### **Percentage Fees**

The court finds that the fees computed on a percentage basis recovery for Client are reasonable and a fair method of computing the fees of Applicant in this case. Such percentage fees are commonly charged for such services provided in non-bankruptcy transactions of this type. The court allows Final Fees of \$22,666.67 pursuant to 11 U.S.C. § 330 for these services provided to Client by Applicant. The Chapter 13 Trustee is authorized to pay from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

#### **Costs & Expenses**

Second and Final Costs in the amount of \$337.68 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available Plan Funds in a manner consistent with the order of distribution under the confirmed Plan.

The court authorizes the Chapter 13 Trustee to pay 100% of the fees and 100% of the costs allowed by the court.

Applicant is allowed, and the Chapter 13 Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$22,666.67
Costs and Expenses	\$337.68

pursuant to this Application as final fees and costs pursuant to 11 U.S.C. § 330 in this case.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Kevin L. Elder of Penny & Associates (“Applicant”), Non-Bankruptcy Attorney for Daniel Martin Furlong and Karen Marie Furlong, the Chapter 13 Debtor, (“Client”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Kevin L. Elder of Penny & Associates is allowed the following fees and expenses as a professional of the Estate:

Kevin L. Elder of Penny & Associates, Professional employed by the Chapter 13 Debtor

Fees in the amount of \$22,666.67  
Expenses in the amount of \$337.68,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for the Chapter 13 Debtor.

**IT IS FURTHER ORDERED** that payment is authorized of 100% of the fees and 100% of the costs allowed by this Order by/from **XXXXXXX**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on June 30, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Claimed Exemptions was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

**The Objection to Claimed Exemptions is sustained, and the Debtor's homestead exemption is disallowed for all amounts in excess of \$460,000.00.**

Creditor Cadles of West Virginia ("Creditor") objects to Cindy Ann Forgrave's ("Debtor") Claim of Exemption and requests the court disallow the \$577,000.00 homestead exemption. Relying on the testimony of Certified Appraiser Daniel R. Ketcham, Creditor claims that Debtor is only entitled to a homestead exemption in the maximum amount of \$453,020.83. Dckt. 40, at 4:20.

## RELEVANT LAW

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

## DISCUSSION

California Code of Civil Procedure § 704.730 provides, as of January 1, 2021, that the homestead exemption amount is the greater of the median sale price for a single-family home in the county in which it is located or \$300,000. In the Motion Creditor concedes that Debtor may claim the higher January 1, 2021 exemption amount against Creditor's judgment lien that was recorded on December 15, 2020. Motion, Legal Analysis, Dckt. 40 at 3. The Chapter 13 Trustee in his Objection to Exemption also concedes that the exemption amount should be computed based on the median sale price for the preceding year. The issue of the applicable law to determine the amount of the homestead exemption is not before the court. The factual issues presented to the court relate to the value of the Property and the proper computation of the "countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption" for this Property in Nevada County. Cal Code Civ Proc § 704.730.

### Asserted Value of the Property

On Schedule A/B Debtor asserts that the Fair Market Value of her home is \$650,000. Dckt. 1. On Schedule C Debtor claims an exemption of \$557,000.00 in the Property, citing to C.C.P. § 704.730. *Id.* Debtor thus asserting that the median sales price for homes countywide in Nevada County for 2020 was \$557,000.00.

Creditor objects that the median value of a single-family home in Nevada County, where the Property is, has never been \$557,000.00 in the calendar year 2020, the year preceding Debtor's claim. Dckt. 40, Objection, at 4.

Creditor has provided the court with the Declaration of Daniel R. Ketcham. Dckt. 42. According to the Declaration filed under penalty of perjury, Mr. Ketcham is a Certified Appraiser with over 30 years of experience in Nevada County. He testifies that based upon his review of the historical data compiled by the California Association of Realtors, it is his opinion that the countywide median sale price for a single-family home in Nevada County as averaged over twelve months for 2020 was \$453,020.83. Dckt. 42, ¶ 4. Mr. Ketcham further testifies that based on his review of data reported by the MLS for Western Nevada County, the median sale price for a single-family home for 2020, averaged over 12 months, was \$441,729.16. *Id.*, ¶ 5.

Therefore, Creditor asserts that Debtor is only entitled to a Homestead Exemption in the maximum amount of \$453,020.83.

### Debtor's Reply

Debtor filed a Reply on July 12, 2021 arguing that the plain meaning of the term "in the calendar prior" of C.C.P. § 704.730 refers to a specific month, rather than the median price averaged over twelve months. Dckt. 67, at 7:8-10. Thus, Debtor urges the court to use the median sales value for the month of December 2020, when the judgment lien was recorded. *Id.*, at 3:10.

Debtor cites the Trustee in arriving at a figure of \$503,000.00 as the median price of homes in Nevada County for December 2020.<sup>FN.1</sup> *Id.*, at 3:10. Debtor assumes that this figure refers to a



*monthly* median sale price, but a review of the Trustee's citation to geodataplus.com indicates that the data represents a "*yearly median*". Dckt. 38, ¶ 12. Thus, Debtor has inadvertently contradicted his legal argument.

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FN.1. Debtor is referring to valuations provided by Trustee in his Objection to Debtor's Exemption, which is set to be heard on August 10, 2021. The court does not further refer to the information provided under that pleading.  
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## DECISION

With respect to statutory construction, whether a California statute or federal law, the court first looks to the plain language of the statute and applies the law as written by the Legislature or Congress.

The statute plainly states:

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide **median** sale price for a **single-family** home **in the calendar year prior** to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

C.C.P. § 704.730 (emphasis added.)

The statute tells the court to look to the prior year, not "a month in the prior year," or the "last month of the year," but says "in the prior year."

Second, the court must be presented with the "median sale price for a single-family home in the calendar year." The statute does not provide any special definition for the word "median." California exemption law provides some specific definitions to be used in determining homestead exemptions in California Code of Civil Procedure § 704.710. A definition of the word "median" or "single-family home" is not provided in that section.

"Median" is a mathematical term which is well known. Black's Law Dictionary provides a definition of "median" as,

Located in or related to the precise midpoint in a range of values or quantities, such that half of them fall above the midpoint and half below.

MEDIAN, Black's Law Dictionary (11th ed. 2019). Applying this definition, the statute requires the court to determine what is the value of the single-family homes sold in 2020 for which half of those sold would be for a higher value and half of which were sold would be a lower value.

This definition is consistent with that provided in the Merriam-Webster Dictionary, in which "Median" is defined as "a value in an ordered set of values below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle

number.” <https://www.merriam-webster.com/dictionary/median.>

The court must be presented with, and determine, what the Median sales price is for a single-family home in Nevada County in 2020. This necessitates the parties providing the court with evidence of prices of all of the single-family home sales in 2020 in Nevada County (or provide the court with credible testimony and properly authenticated, admissible evidence of a determination of such Median sales price of a single-family home).

As for “single-family home,” for which a definition is not provided in the statute, Black’s Law Dictionary provides the following

single..... “Consisting of one alone; individual”

family..... “A group of persons connected by blood, by affinity, or by law, esp. within two or three generations”

home..... “A dwelling place”

Black’s Law Dictionary (11th ed. 2019).

Where Debtor can provide opinion as to values, in this case, Debtor would have to have knowledge of every single sale in Nevada City County for the year 2020 in order to determine the median sales price. Debtor provides no evidence as to the Median sale prices of single-family homes in 2020. Debtor does direct the court to arguments made by the Chapter 13 Trustee in his objection to the claim of exemption. Debtor argues that the court should determine that the Median sales price for a single-family home in Nevada County in 2020 was either \$503,000 or \$508,000. Reply, p. 2:4-7. Debtor states that it is “undisputed . . . and the median value in Nevada County was \$503,000.00, pursuant to the Chapter 13 Trustee findings and \$508,000.00 based on the evidence presented in the Objection at hand.”

In the opposition, which Debtor titles “Reply,” Debtor’s counsel argues that Debtor will provide her lay opinion based on a “belief” that:

the median value of properties in Western Nevada County  
which supports an opinion of \$598,000.00 value on her home.

*Id.*, ¶ 3. Further, Debtor will provide additional lay opinion testimony based upon a “belief” that:

the median value of properties in Western Nevada County  
which supports a exemption of \$557,000.00.

*Id.*, ¶ 4.

This lay opinion testimony is wrong on several counts. First, the statute does not specify that the exemption is computed based on the “median value of properties” in Western Nevada County, but the median sales price (not merely values) of single-family home in the county (the entire county) in the prior year.

Second, the testimony to be given does not appear to be testimony permitted under, or would be found credible by the court, the Federal Rules of Evidence. Lay witness opinion testimony is allowed only as follows:

Rule 701. Opinion Testimony by Lay Witnesses

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; **and**
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Fed. R. Evid. 701. Initially, it is stated only that Debtor has a "belief" as to the value of all the properties in part of Nevada County. Then, she is wanting to offer "expert," specialized knowledge and training testimony of an appraiser or a Realtor. Nothing is set forth that she has any specialized knowledge, nor that such "belief opinion" is rationally based on Debtor's perception.

In the Reply, Debtor's counsel argues that a "fact" in dispute is that the statute enacted by the California Legislature states that it is the median sales price for a single-family home "in the calendar year prior to the calendar year" that the exemption is claimed, and that the "fact" in dispute is that Debtor contends that such language means in the 'last month of the prior calendar year.'

This "dispute" is not a factual dispute, but one in which the court reads the plain language of the statute and makes a ruling of law. Here, the statute says the median price in the prior "calendar year," not the last month of the prior calendar year, not the month that the Debtor chooses in the prior calendar year, or the same month in the prior calendar year as the month in the current year where Debtor claims her homestead exemption.

Debtor's counsel's plain reading of this statute is stated in the Reply as:

Based on the Plain Meaning of the statute, the Prior year being 2020, and the Abstract arising in December of 2020, the Median value in December of 2020 being \$503,000, the exemption would be \$503,000.

Reply, p. 5:5-8; Dckt. 67. Such "plain language reading" of the statute is clearly incorrect and has the Debtor rewriting the law as written by the California Legislature.

**Evidence of Median Sales Prices For Single-Family Homes  
in 2020, the Calendar Year Prior to Debtor's  
Claiming of Exemption (Filing of Bankruptcy)**

As reviewed above, Debtor relies upon the evidence presented by the Chapter 13 Trustee and Creditor as to the median sales price of homes in Nevada County in 2020. In Creditor's Expert Witness Declaration, he has obtained information from the California Association of Realtors for "single-family homes" (the term does not appear to be defined by the Association) and provides the court with monthly median sales price amounts. Declaration, ¶ 3; Dckt. 42. The Witness then adds together the monthly median amounts stated and then averages them out over the twelve months of 2020.

This averaging is not what is called for in the statute. The court must determine the median sales price for the entire year. It may be that in January \$367,000 median sales price is based on three homes sold. Then for December 2020, the \$508,000 median sales price may be based on the sales of 101 homes. To merely average in a lower or higher month that has significantly fewer sales distorts the median (in the middle) determination for the entire year. In Paragraph 5 of his Declaration, the Witness does the same averaging calculation, rather than a median calculation, with data from the Multiple Listing Service for Western Nevada County. In addition to providing merely an average based on monthly medians, it also is only for a portion of Nevada County.

As presented to the court, the court has not been presented with evidence to make the necessary factual determination of the median sales price for a single-family home in 2020.

In the Objection, Creditor seeks to have the average of 2020 monthly median sales price for single-family homes be determined to be \$453,020. Debtor argues for a homestead exemption of \$503,000 which is indicated as the December 2020 median sales price. This \$503,000 exemption amount is argued for by the Chapter 13 Trustee in his Objection to Claim of Exemption. Dckt. 36.

In his Declaration (¶ 3) the Creditor's Expert Witness shows the monthly median sales price for Nevada County, while averaging medians is not a proper calculation, it may provide a method for these parties to strike a rational, economic accord. If one assumes that in the second half of 2020 the real estate market went to new heights of buying craziness and that there were 10% more sales at higher prices, the "average" used by Creditor would be pulled up a bit:

January - June median sales total \$2,515,000, when divided by 6 months, averages \$419,177. Then for July - December, the median sales total \$2,920,500, which if increased by 20% equals \$3,212,550. Divide that by the later six months of the year, and that averages \$535,425.

Continuing with averaging the median, the two six month median averages total \$1,003,277, which then averages (dividing by 2) \$477,301.

Before the court can determine the amount of the homestead exemption, evidence of the median (not a mean average) of the sales price for single-family homes for 2020 will have to be provided. It may well be that a common ground exists around \$480,000, which is something more than the Creditor advances and something less than what Debtor hopes to put in the barn. It swings about \$20,000 each way. The Parties and their counsel can consider what it is going to take to assemble the necessary evidence (Creditor being the objecting party) and the cost, versus putting this to be by agreement.

At the hearing, the parties agreed to continue the hearing as they worked to determine the economics of what is required to establish the amount of the homestead exemption when it is based on the median sales price of single-family homes countywide.

### **Additional Evidence Presented**

#### **Declaration of Oscar Wei**

On August 4, 2021, Creditor Cadles filed the Declaration of Oscar Wei, Deputy Chief Economist of the California Association of Realtors, who testifies to the following:

With respect to sales statistics for existing single-family homes, county sales data is obtained from more than 90 association of Realtors/multiple listing services throughout the state of California

3. The Nevada County median sale price for the calendar year 2020 is as follows:

A. Existing home sales (detached single-family homes): \$460,000.00

B. Existing home sales (attached - condos/townhomes): \$267,500.00.

Declaration, at 2:6-11. Mr. Wei further defines the median price term according to the Association:

The median price of all existing homes sales represents the mid-price point of all closed sales of existing single family homes, detached and attached, respectively.

*Id.*, at 2:17-19. Mr. Wei also testifies as to the actual information available to produce this median price:

Due to confidentiality agreements with MLS, C.A.R. is only able to publish and disseminate compiled statistics such as the median sale price and not each and every sale price individually reported to it.

*Id.*, at 3:2-4.

#### **Declaration of Brian Melsheimer**

Debtor filed a Supplemental Reply on August 10, 2021. In support of the Response, Debtor has provided the Declaration of Brian Melsheimer, MNAA, Certified Residential Real Estate Appraiser. Dckt. 89. In the Declaration, Mr. Melsheimer does not provide testimony as to the median value of the sale price for single-family residence in Nevada County in 2020, but directs the court to read his finding in Exhibit B. Declaration, § II; *Id.*

Exhibit B is a letter, not under penalty of perjury, written by Mr. Melsheimer to counsel for the Debtor. In it Mr. Melsheimer states that he has analyzed “all residential property types,” which he states includes:

[a]partments, condominium, cooperative, duplex, multi-family dwelling, mobile

home, residential miscellaneous, planned unit development, quadruplex, single-family residence, townhouse, timeshare, and triplex.

Exhibit B; Dckt. 90. He computes that being 3,860 total sales in Nevada County in 2020 (presumably of the above) and that the **MEDIAN** (court’s emphasis) sales price was \$450,000. Exhibit B; Dckt. 90. <sup>Fn.1.</sup>

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FN. 1. In his opinion, Mr. Brian Melsheimer also provides testimony of what he computes the “**MEAN (AVERAGE)**” (court emphasis added) value of the identified sales was \$569,342. As discussed above, the plain language of the statute as written by the California Legislature requires that the court use the median number – equal number of sales values above and below the center value – and not the mean, in which extraordinarily high sales prices skew the “average” higher than the median.  
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## Ruling

In her reply Debtor argues that the **MEAN (AVERAGE)** (court added emphasis) sales price was \$569,342. Though the court thoroughly addressed the plain language of the statute and the California Legislature expressly stating that is the **MEDIAN** (court added emphasis) sales price of a single-family home, Debtor does not state how the word “median” as used in the California statute can be interpreted to mean “mean” (“average”).

Mr. Wei provides testimony that uses consistent language with the statute, stating that the median detached single-family home value was \$460,000 for Nevada County in 2020. He also provides testimony as to condos and townhomes, stating that the median 2020 sales price for those was \$267,500.

The experts, the parties, counsel, and the court are left with the task of figuring out how to figure out the Nevada County countywide median sale price for a single-family home in 2020. Both experts have testimony as to the median single-family home price, one stating \$450,000 and the other \$460,000.

Neither party addresses the definition of a “single-family home” in this statute. The statute does not define it. The related exemption statutory definitions do not define it. The legislative history the court could find on the California Legislative Information website had no legislative history analysis of this bill or the intention of the Legislature in passing the legislation.<sup>Fn.2.</sup> It does not appear that either counsel had any better results from their efforts.

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FN. 2. [https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill\\_id=201920200AB1885](https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1885).  
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Being left to its own devices and the Black’s Law Dictionary definition, the court concludes that for purposes of computing the homestead exemption, which is intended to provide a judgment debtor with a protected stake from judgment creditors to keep a roof over his/her family’s head, the detached single-family home is what the legislature intended. Additionally, both parties have provided the court with a value for that definition.

The court determines that the median sales price for a single-family home in Nevada County,

California in 2020 was \$460,000. Therefore, the homestead exemption that Debtor may claim in this case is \$460,000, which is 53.3% greater than the minimum \$300,000 amount provided in California Code of Civil Procedure § 704.730(a)(2).

Therefore, the Debtor's homestead exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) claimed in the real property commonly known as 12691 Angie Court, Penn Valley, California is allowed in the amount of \$460,000.00 and disallowed for all amount claimed in excess thereof.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Exemption filed by Cadles of West Virginia, "Creditor" to the homestead exemption claimed in the real property commonly known as 12691 Angie Court, Penn Valley, California by Cindy Ann Forgrave, the "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained and the homestead exemption of the Debtor in the real property commonly known as 12691 Angie Court, Penn Valley, California is allowed in the amount of \$460,000.00 and disallowed for all amount claimed in excess thereof.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on June 30, 2021. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Claimed Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Claimed Exemptions is sustained and the homestead exemption is disallowed for all amounts in excess of \$460,000.00.**

The Chapter 13 Trustee, David Cusick ("Trustee") objects to Cindy Ann Forgrave's ("Debtor") claimed exemptions under California law because Debtor may have over-exempted real property located at 12691 Angie Court, Penn Valley, California ("Property"), and requests that the court disallow the exemption for any amount over \$503,000.00

C.C.P. §704.730(a) allows a homestead exemption that is the greater of \$300,000 or, "The countywide median sale price for single-family home in the calendar year prior to the calendar year in which the judgement debtor claims the exemption". This case having been filed on April 29, 2021, the prior calendar year would be 2020.

On Schedule C, Debtor exempted her residence in the amount of \$557,000.00 pursuant to C.C.P. §704.730. Dckt. 1.

## DISCUSSION

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*



Here, Trustee argues that Debtor has offered no evidence to bear the burden of proof that she is entitled to an exemption amount of \$557,000.00 and it is unclear to the Trustee if the Court will allow the Debtor to claim this large amount as exempted for her real property.

Trustee does not dispute the claim of exemption up to the amount of \$503,000.00, where Trustee's own research shows that this may be the median sale price in 2020 as stated in <https://www.geodataplus.com/property-data/california/nevada-ca-county>. Trustee adds that on the other side, the median sale price in 2020 could be as low as \$455,000 based on sales in Western Nevada County and points the court to <https://nevadacountyhomes.com/wp-content/uploads/2021/01/December2020YTD.pdf>.

### **Additional Evidence Presented**

No further evidence was presented by the Chapter 13 Trustee. However, in connection with creditor Cadles of West Virginia's Objection to this exemption claimed by Debtor the following additional evidence was presented.

### **Declaration of Oscar Wei**

On August 4, 2021, Creditor Cadles filed the Declaration of Oscar Wei, Deputy Chief Economist of the California Association of Realtors, who testifies to the following:

With respect to sales statistics for existing single-family homes, county sales data is obtained from more than 90 association of Realtors/multiple listing services throughout the state of California.

3. The Nevada County median sale price for the calendar year 2020 is as follows:

A. Existing home sales (detached single-family homes): \$460,000.00

B. Existing home sales (attached - condos/townhomes): \$267,500.00.

Declaration, at 2:6-11. Mr. Wei further defines the median price term according to the Association:

The median price of all existing homes sales represents the mid-price point of all closed sales of existing single family homes, detached and attached, respectively.

*Id.*, at 2:17-19. Mr. Wei also testifies as to the actual information available to produce this median price:

Due to confidentiality agreements with MLS, C.A.R. is only able to publish and disseminate compiled statistics such as the median sale price and not each and every sale price individually reported to it.

*Id.*, at 3:2-4.

## Declaration of Brian Melsheimer

Debtor filed a Supplemental Reply on August 10, 2021. In support of the Response, Debtor has provided the Declaration of Brian Melsheimer, MNAA, Certified Residential Real Estate Appraiser. Dckt. 89. In the Declaration, Mr. Melsheimer does not provide testimony as to the median value of the sale price for single-family residence in Nevada County in 2020, but directs the court to read his finding in Exhibit B. Declaration, § II; *Id.*

Exhibit B is a letter, not under penalty of perjury, written by Mr. Melsheimer to counsel for the Debtor. In it, Mr. Melsheimer states that he has analyzed “all residential property types,” which he states includes:

[a]partments, condominium, cooperative, duplex, multi-family dwelling, mobile home, residential miscellaneous, planned unit development, quadruplex, single-family residence, townhouse, timeshare, and triplex.

Exhibit B; Dckt. 90. He computes that being 3,860 total sales in Nevada County in 2020 (presumably of the above) and that the **MEDIAN** (court’s emphasis) sales price was \$450,000. Exhibit B; Dckt. 90. <sup>FN.1.</sup>

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FN. 1. In his opinion, Mr. Brian Melsheimer also provides testimony of what he computes the “**MEAN (AVERAGE)**” (court emphasis added) value of the identified sales was \$569,342. As discussed above, the plain language of the statute as written by the California Legislature requires that the court use the median number – equal number of sales values above and below the center value – and not the mean, in which extraordinarily high sales prices skew the “average” higher than the median.  
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## Ruling

In her reply Debtor argues that the **MEAN (AVERAGE)** (court added emphasis) sales price was \$569,342. Though the court thoroughly addressed the plain language of the statute and the California Legislature expressly stating that is the **MEDIAN** (court added emphasis) sales price of a single-family home, Debtor does not state how the word “median” as used in the California statute can be interpreted to mean “mean” (“average”).

Mr. Wei provides testimony that uses consistent language with the statute, stating that the median detached single-family home value was \$460,000 for Nevada County in 2020. He also provides testimony as to condos and townhomes, stating that the median 2020 sales price for those was \$267,500.

The experts, the parties, counsel, and the court are left with the task of figuring out how to figure out the Nevada County countywide median sale price for a single-family home in 2020. Both experts have testimony as to the median single-family home price, one stating \$450,000 and the other \$460,000.

Neither party addresses the definition of a “single-family home” in this statute. The statute does not define it. The related exemption statutory definitions do not define it. The legislative history the court could find on the California Legislative Information website had not legislative history analysis of this bill or the intention of the Legislature in passing the legislation.<sup>FN.2.</sup> It does not appear that either

counsel had any better results from their efforts.

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Being left to its own devices and the Black's Law Dictionary definition, the court concludes that for purposes of computing the homestead exemption, which is intended to provide a judgment debtor with a protected stake from judgment creditors to keep a roof over his/her family's head, the detached single-family home is what the legislature intended. Additionally, both parties have provided the court with a value for that definition.

The court determines that the median sales price for a single-family home in Nevada County, California in 2020 was \$460,000. Therefore, the homestead exemption that Debtor may claim in this case is \$460,000, which is 53.3% greater than the minimum \$300,000 amount provided in California Code of Civil Procedure § 704.730(a)(2).

Therefore, the Debtor's homestead exemption pursuant to California Code of Civil Procedure § 704.730(a)(1) claimed in the real property commonly known as 12691 Angie Court, Penn Valley, California is allowed in the amount of \$460,000.00 and disallowed for all amount claimed in excess thereof.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Claim of Exemption filed by David Cusick, the Chapter 13 Trustee, to the homestead exemption claimed in the real property commonly known as 12691 Angie Court, Penn Valley, California by Cindy Ann Forgrave, the "Debtor" having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is sustained and the homestead exemption of the Debtor in the real property commonly known as 12691 Angie Court, Penn Valley, California is allowed in the amount of \$460,000.00 and disallowed for all amount claimed in excess thereof.

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Avoid Judicial Lien is granted, avoiding the judicial lien for all amounts in excess of \$88,000.00.**

This Motion requests an order avoiding the judicial lien of Jonathan Neil & Associates, Inc. ("Creditor") against property of the debtor, Cindy Ann Forgrave ("Debtor") commonly known as 12691 Angle Ct, Penn Valley, CA 95946, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$132,955.81. Exhibit A, Dckt. 18. An abstract of judgment was recorded with Nevada County on November 21, 2019, that encumbers the Property. *Id.*

The Creditor is listed as the judgment creditor on the Abstract and the judgment debtor is listed as Baga Forgrave Interests, Inc, a California Corporation. *Id.*

On her Petition Debtor states that she, an individual living person, was formerly doing business identifying herself as a corporation – "FDBA Baga Forgrave Interests, Inc." Petition, Part 1, Question 4, Dckt. 1. No individual may use a fictitious business name which includes Inc., Corp., or the like. Cal. B&P. § 17910.5(a).

On Schedule A/B Debtor states under penalty of perjury that she has no interests in any corporations, partnerships, limited liability companies, unincorporated associations, or joint ventures. Schedules A/B, Question 19; Dckt. 1.

In response to Question 27 on the Statement of Financial Affairs, Debtor states she has various businesses (not identifying the nature of the business structure), which includes Baga Forgrave Interest, Inc. *Id.* at 41. The nature of Baga Forgrave Interest, Inc.'s business is not stated and it does not state that operation of the corporation terminated pre-petition.

The California Secretary of State lists the corporation Baga Forgrave Interests, Inc. as being a "SOS/FTB Suspended Corporation." <sup>FN.1.</sup> A person named "Peter Baga" located in San Francisco, California is identified as the agent for service of process. On the July 2, 2015 Statement of Information stating that there was no change in information about Baga Forgrave Interests, Inc, it is signed by "Cindy Forgrave" as the treasurer. For the prior October 29, 2012 Statement of Information which was stated to still be correct in 2015, Cindy Forgrave's address is listed as being in San Francisco, California. She is also listed as a Director of Baga Forgrave Interests, Inc.

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FN. 1. <https://businesssearch.sos.ca.gov/CBS/Detail>, All of the referenced Statements of Information and other information reference are from the Secretary of State's website.  
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Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$650,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$237,908.06 as of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$557,000.00 on Schedule C. *Id.*

### **Creditor's Opposition**

Creditor opposes the Motion to Avoid Judicial Lien on the basis that:

- A. Debtor's claim of valuation is not supported by competent evidence;
- B. Debtor has apparently misrepresented to the court facts evidencing the true balances of any existing loans; and
- C. Remaining equity would leave sufficient funds to pay Creditor's lien.

First, Creditor contends that the motion and supporting declaration are devoid of any evidence that might support Debtor's "self-serving and conclusory statement that the Property is worth \$598,000.00." Dckt. 49, Opposition, 2:24-25. There is no appraisal supporting the alleged current value, no statement as to how the value was determined, and no reference to any outside source for a verification of value. *Id.* Creditor further questions Debtor's line of reasoning that "being a homeowner renders one qualified or competent to offer admissible evidence as to property valuation." *Id.*

Second, Debtor claims a mortgage balance in the amount of \$102,000.00; yet Creditor asserts

that there is no evidence of any such outstanding voluntary lien on the Property and that Debtor has failed to submit recent statements of the loan balance. *Id.*, at 3:10-12.

Third, even admitting, for the sake of discussion, that Debtor's representations of the allowable homestead exemption and loan balance are accurate, there would be sufficient equity in the Property to satisfy Creditor's lien. *Id.*, at 3:13-15. On Zillow.com, the value of the Property is estimated at \$1,003,000.00. Dckt. 50, Ex. 1.

### **Debtor's Reply**

Debtor contends that both the "Zillow report" and Creditor's declaration concerning the Zillow estimate are inadmissible hearsay. Dckt. 60. Debtor also explains that she determined the value of the Property by personally viewing it for defects and by accounting for the fact that it is a modular home that depreciates in value every year. *Id.* Debtor has testified to damages to the Property including leaks in the roof, water damages to the kitchen floor, the need for dry-wood replacement in the master bedroom, and leaks in the sky lights, which are also not squared, causing cracks in the wall. Dckt. 17, declaration, ¶ 9.

### **DECISION**

As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While it is evidence of value, Debtor's opinion is the most ephemeral evidence of value for the residence. Nonetheless, evidence of value has been provided in the Debtor's opinion.

Debtor's Declaration states the following regarding the condition of the Property:

9. The property has a (3) bedroom, (2) bath modular (3) piece home which is deteriorating in value as the floors in the kitchen have water damages and needs replacement.

There are multiple leaks in the roof and it needs replacement.

The master bathroom needs floor and dry-wood replacement due to the water heater damages which continues to leak. The sky lights leak and are not squared correctly, causing cracks in the walls, which I estimate would be approximately \$40,000.00 to repair.

Declaration; Dckt. 17, at ¶ 9.

Creditor has come forward disputing Debtor's valuation and providing the court with copies of a real estate website. The copies are not accompanied by the declaration of an appraiser but that of Debtor's Counsel. Dckt. 50. In his declaration Counsel states that "the office ran a search for the Property," and that a true and correct copy of the printout has been included. There is no personal knowledge testimony nor does Counsel explain how this report survives the evidence rules on hearsay.

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is

dependent on that prior determination.

At the hearing the parties agreed to continue this for a Status Conference, pending the prosecution of the Objection to Exemption.

### **Determination of the Judgment Lien**

The court has determined that Debtor's homestead exemption pursuant to California Code of Civil Procedure § 704.730 is in the amount of \$460,000. The Debtor states under penalty of perjury that the fair market value of the property subject to Creditor's judicial lien is \$650,000. Debtor then seeks to reduce the fair market value to a net sales proceeds value by deducing 8% for costs of sale.

The term "fair market value" is one commonly used in bankruptcy cases and well known to practitioners. One simple definition is the fair market value of a property is the price which a willing buyer, under no compulsion to purchase, and which a willing seller, under no exigency to sell will pay and accept for a sale of the property. As explained by the California Supreme Court in *City of San Diego v. Neumann*, 6 Cal. 4th 738, 744 (1993):

In striking this balance between the public's need and the owner's loss, our Legislature has provided that the measure of compensation for property taken pursuant to the government's powers of eminent domain is its "fair market value." (Code Civ. Proc., § 1263.310.) It has defined "fair market value" as "the highest price on the date of valuation that would be agreed to by a seller, being willing to sell but under no particular or urgent necessity for so doing, nor obliged to sell, and a buyer, being ready, willing, and able to buy but under no particular necessity for so doing, *each dealing with the other with full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.*" (§ 1263.320, italics added.)

It is not a net sales price.

The court makes the following arithmetical computation required by 11 U.S.C. § 522(f)(2)(A):

FMV	\$650,000.00	
Homestead Exemption	(\$460,000.00)	
Mortgage Schedule D, Dckt. 1 Debt Incurred 3/31/2020 No Recording Date Provided	(\$102,000.00)	Howard Allen Wood Separate Property Trus
Judgment Lien Recorded 11/21/2019 Exhibit A, Dckt. 18	(\$132,955.81)	Jonathan Neil & Associates
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Surplus Over/(Impairment of Homestead) Exemption	(\$44,955.81)	
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Thus, the judgment lien is avoided for all amount in excess of \$88,000, and its fixing is avoided in excess of \$88,000.00 subject to 11 U.S.C. § 349(b)(1)(B).

### **ISSUANCE OF A COURT-DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cindy Ann Forgrave (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Jonathan Neil & Associates, California Superior Court for Alameda County Case No. RG17879548, recorded on November 21, 2019, Document No. 20190024611, with the Nevada County Recorder, against the real property commonly known as 12691 Angle Ct, Penn Valley, California, is avoided in its entirety for all amounts in excess of \$88,000.00 pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.



**The Document Recording Number Was Blocked Out  
on the Proof of Claim Exhibit, And Must Be Provided  
For the Court to Issue an Order**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on June 4, 2021. By the court's calculation, 46 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Avoid Judicial Lien is granted and the lien is avoided in its entirety.**

This Motion requests an order avoiding the judicial lien of Cadles of West Virginia LLC ("Creditor") against property of the debtor, Cindy Ann Forgrave ("Debtor") commonly known as 12691 Angle Ct, Penn Valley, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$282,628.05. Dckt. 23, Ex. B. An abstract of judgment was recorded with Nevada County on December 15, 2020, that encumbers the Property. *Id.* On May 25, 2021, Creditor filed Claim 2-1 for \$295,614.50, which includes the principal amount of the judgment plus accrued interest. Dckt. 32, declaration, ¶ 8.

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$650,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$237,908.06 as

of the commencement of this case are stated on Debtor's Schedule D. *Id.* Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$557,000.00 on Schedule C. *Id.*

### **Creditor's Opposition**

Creditor opposes the Motion on the basis that:

- A. The value of the Property is greater than Debtor states;
- B. Liquidation costs should not be deducted to determine fair market value;
- C. Debtor's homestead is not fully impaired by Cadles' lien; and
- D. Creditor Jonathan Neil & Associates did not timely object to Debtor's claim of exemption.

In opposition to Debtor's valuation of the property, Creditor submitted a professional appraisal report by Daniel R. Ketcham, a certified real estate appraiser. Mr. Ketcham sets forth the fair market value of the Property, as of April 29, 2021, at \$800,000. Dckt. 57, ¶ 4. Mr. Ketcham in part bases his appraisal on the recent dramatic upward price trends in the area. Dckt. 57, Ex. 2, at 6. Since Debtor's purchase of the Property in May 2017 for \$625,000, overall market appreciation in Western Nevada County has been approximately 44.8%. *Id.*, at 4. However, in the appraisal report, Mr. Ketcham states under the heading "Extraordinary Assumption" that the client requested no interior inspection, because, reportedly, property ownership via legal counsel denied a request for an on-site inspection. *Id.*, at 3. Mr. Ketcham discloses that the use of this assumption might have affected results. *Id.* Debtor has testified to the existence of variegated and substantial damage to the interior of the home. Dckt. 60.

Second, Creditor opposes Debtor's attempt to discount the "costs of sale" from the fair market value of the Property. The court has preciously noted this issue:

In the notes to line 1.1 in Schedule A/B, Debtor states that the Property has a fair market value of \$650,000.00, which Debtor discounts down to \$598,000.00 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds.

Civil Minutes, June 29, 2021; Dckt. 45.

Third, Creditor argues that Debtor's homestead is not fully impaired by Creditor's lien. Assuming the FMV of the Property is \$800,000.00, and that Debtor's permissible homestead exemption is \$453,020.83 (the median sale price in Nevada County for 2020), Creditor shows that Debtor has sufficient equity to satisfy at least some of Cadles' lien, after accounting for the \$147,742.00 judicial lien of Jonathan Neil & Associates as well as the alleged \$102,000.00 consensual lien of Howard Allen Wood. Dckt. 55, at 7. Thus Creditor asserts there is sufficient equity to protect Cadles' lien as a secured claim in the sum of \$97,236.89. *Id.*

Fourth, Creditor alleges that Jonathan Neil & Associates failed to timely object to Debtor's

claim of exemption and that accordingly the claim of exemption is good against this creditor. *Id.*, at 8. In the event that Jonathan Neil & Associates' judicial lien is avoided in its entirety, Creditor asserts that its judicial lien would be unavoidable in the sum of \$244,979.17 and avoidable in the sum of \$50,635.33. *Id.* In the alternative, Creditor requests the court to deny the Motion, finding that Cadles has a secured lien in the amount of \$97,236.89.

### **Debtor's Reply**

Debtor asserts that her estimate of \$598,000.00 as the FMV of the Property is based on her lay opinion of the median value of properties in the county, although this statement contradicts Debtor's notes to line 1.1 in Schedule A/B, which explained that the \$598,000.00 figure was calculated by discounting 8% from the FMV due to "costs of sales." Dckt. 62, ¶ 3. Debtor also confusedly states that her belief of the median value of properties supports an exemption of \$557,000.00, while simultaneously adopting Creditor's calculation of median value of \$508,000.00 for use as her homestead exemption. *Id.*, at 2:4-6 and 3:20.

### **DISCUSSION**

As the owner, the Debtors' opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004). While it is evidence of value, Debtor's opinion is the most ephemeral evidence of value for the residence. Nonetheless, evidence of value has been provided in the Debtor's opinion.

Debtor's Declaration states the following regarding the condition of the Property:

9. The property has a (3) bedroom, (2) bath modular (3) piece home which is deteriorating in value as the floors in the kitchen have water damages and needs replacement.

There are multiple leaks in the roof and it needs replacement.

The master bathroom needs floor and dry-wood replacement due to the water heater damages which continues to leak. The sky lights leak and are not squared correctly, causing cracks in the walls, which I estimate would be approximately \$40,000.00 to repair.

Declaration; Dckt. 17, at ¶ 9.

Creditor has come forward disputing Debtor's valuation and provides the court with the appraisal and Declaration of Daniel R. Ketcham. Mr. Ketcham testifies under penalty of perjury that in creating the appraisal he inspected the exterior of the Property, analyzed public data on the Property, gathered and analyzed market data with an emphasis on comparable sales and other factors. Declaration; Dckt. 57, at ¶ 3. After accounting for this information, Mr. Ketcham concludes that the fair market value of the Property as of April 29, 2021 is \$800,000. *Id.*, at ¶ 4. However, Mr. Ketcham does note that the appraisal does not include information as to the conditions of the interior of the Property.

Currently pending before the court are two Objections to Exemption that relate to the

property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing the parties agreed to continue this for a Status Conference, pending the prosecution of the Objection to Exemption.

### **Determination of the Judgment Lien**

The court has determined that Debtor's homestead exemption pursuant to California Code of Civil Procedure § 704.730 is in the amount of \$460,000. The Debtor states under penalty of perjury that the fair market value of the property subject to Creditor's judicial lien is \$650,000. Debtor then seeks to reduce the fair market value to a net sales proceeds value by deducting 8% for costs of sale.

Though Debtor's appraiser has an opinion of \$800,000 of value, such is a "drive by" exterior inspection of the Property. Exhibit 2, Dckt. 57. Debtor asserts that the property has serious water damage and roof leak issues, and estimates that there is a \$40,000 repair bill.

Debtor's \$650,000 figure is closer to the \$460,000 median single-family home price in Nevada County determined by the court in ruling on Creditor's objection to Debtor's claim of exemption.

In looking at Creditor's expert's Appraisal Report, on page 2 of 32, the Summary of Important Facts & Conclusions, the appraiser states that this property was purchased on May 26, 2017, for \$625,000. It is commonly known in this jurisdiction that real property values have dramatically increased over the past four years, and a property worth \$625,000 in 2017 would be dramatically worth more now than four years ago. It is not clear whether the damage has occurred since 2017 or the property was purchased with the damage in 2017.

In his appraisal, Creditor's expert has used some manufactured homes and some "ranch" homes. The manufactured homes are stated by Creditor's expert to be similar in quality of construction, with the size of the lots being substantially smaller – Debtor's manufactured home being on 49.84 acres and the two comparables being on 10 acres (a +\$200,000 adjustment) and 5 acres (a +\$250,000 adjustment). Appraisal, p. 181-19 or 32, Exhibit 2; Dckt. 57.

Considering the information in the Appraisal Report and making adjustments for the undisputed damage testified to by Debtor, the court computes the fair market value of the Property to be \$677,500.00. The court concludes that the value based on the Appraisal Report, exterior inspection, is \$757,500, and the value is then adjusted (\$80,000), the court concluding that Debtor's estimate of construction repairs in 2021 of (\$40,000) is not reasonable for the damage described.

The court makes the following arithmetical computation required by 11 U.S.C. § 522(f)(2)(A):

FMV	\$677,500.00	
Homestead Exemption	(\$460,000.00)	

Mortgage Schedule D, Dckt. 1 Debt Incurred 3/31/2020 No Recording Date Provided	(\$102,000.00)	Howard Allen Wood Separate Property Trus
Judgment Lien Recorded 11/21/2019 Exhibit A, Dckt. 18	(\$132,955.81)	Jonathan Neil and Associates
Judgment Lien Recorded 12/15/2020 Proof of Claim 2-1	(\$295,614.00)	Cadles of West Virginia LLC
	=====	
Surplus Over/(Impairment of Homestead) Exemption	(\$313,069.81)	

Thus, the judgment lien is avoided in its entirety, there being no value in the Property for Creditor's judgment lien in excess of the senior consensual liens, judgment lien, and homestead exemption, and its fixing is avoided in its entirety subject to 11 U.S.C. § 349(b)(1)(B).

#### ISSUANCE OF A COURT-DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Cindy Ann Forgrave ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Cadles of West Virginia LLC, California Superior Court for County of Nevada Case No. CU18-083388, recorded on December 15, 2020, Document No. **XXXXXXX**, with the Nevada County Recorder, against the real property commonly known as 12691 Angle Ct, Penn Valley, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 9, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Objection to Confirmation of Plan is XXXXX.**

The Chapter 13 Trustee, David Cusick ("Trustee"), opposes confirmation of the Plan on the basis that Plan relies on Motions to Avoid Liens.

## DISCUSSION

Trustee objects that the Debtor's Plan relies on Motions to Avoid Liens. *See* Dckt. 15 and 21. The Trustee is not certain that Debtor can afford the plan payments unless these motions are successful. These motions have been set for hearing at 2:00 p.m. on July 20, 2021.

### Objection filed by Creditor Cadles of West Virginia

The deadline for filing an Objection was set for June 11, 2021. Creditor filed their Objection on June 24, 2021. Dckt. 31. Notwithstanding this untimeliness, the court will treat this objection as a pleading in support of Trustee's Objection providing supplemental information which identifies a specific claim that is the subject of Trustee's Objection.

Creditor objects on the basis that the proposed Plan does not provide for Creditor's secured claim. Creditor asserts that a money judgment was entered in favor of Creditor against Debtor in the Nevada County Superior Court in the principal amount of \$282,628.05, with the abstract of judgment having been recorded on December 15, 2020 in the Official Records of Nevada County. The money judgment entered against the Debtor and a copy of the Abstract of Judgment are attached to Creditor's Proof of Claim 2-1. Debtor has misclassified Creditor as an unsecured debt in an attempt to modify Creditor's claim and seeks to avoid the judgment lien.

Creditor argues that this case was filed in bad faith and alleges that Debtor's sole purpose in filing for Chapter 13 bankruptcy is to avoid the sale of her residence under Creditor's judgment lien. Creditor explains that after summary judgment was granted in its favor in the underlying state court action, the Debtor quit-claimed her interest in the subject property to third parties, forcing Creditor to bring a fraudulent transfer lawsuit in Nevada County Superior Court. In response to that lawsuit, the third parties quit-claimed their interests back to Debtor and the bankruptcy filing followed. <sup>FN.1.</sup>

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FN. 1. That a judgment debtor would file bankruptcy to avoid the sale of a residence by a judgment creditor is not surprising or improper. However, when the judgement debtor begins transferring away assets and fraudulent transfer litigation ensues, that may be a different story.  
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Creditor further asserts that Debtor has substantially undervalued her residence which sits on 49 acres.

## **Decision**

Debtor's two Motions to Avoid the Liens are currently pending and with respect to any discovery valuation issues, these will be addressed through those motions and as such Creditor can prosecute its part of the contested matter as appropriate.

The court continued this Objection for to be heard on the same date and time as the individual Motions to Avoid Lien set for hearing at 2:00 p.m. on July 20, 2021.

Creditor's information relating to the Trustee's Objection piqued the court's curiosity about what is being alleged concerning this real property. On Schedule A/B Debtor lists the residence in Penn Value of \$598,000 on Schedule A/B. Dckt. 1 at 13. However, in the notes corresponding with this listing, Debtor states that property has a Fair Market Value of \$650,000, which the Debtor discounts down to \$598,000 after deducting 8% for the cost of sale. Debtor stating the current value of the Property on Schedule A/B under penalty of perjury is to state the value of the property, not the net sales proceeds. Thus, we begin with a value of \$650,000.

On Schedule C Debtor claims an exemption of \$557,000 in the Property, citing to California Code of Civil Procedure § 704.730. California Code of Civil Procedure § 704.730 provides, as of January 1, 2021, that the homestead exemption amount is the greater of the median sale price for a single-family home in the county in which it is located or \$300,000. Debtor asserts that the median sales price for homes countywide in Nevada County for 2020 was \$557,000.

On Schedule D, Debtor lists a secured claim in the amount of (\$102,000) which encumbers the Property with a deed of trust or mortgage. Presumably this predates Creditor's judgment lien.

Debtor filed the Motion to Avoid the judgment lien on June 4, 2021. In addition to the deed of trust, Debtor identifies another senior judgment lien in the amount of (\$132,955), which Debtor is also seeking to avoid in another Contested Matter. In the Objection, Creditor asserts that the value of the property is much greater than the \$598,000 asserted by Debtor, noting that in addition to a home, it includes forty-two (42) acres.

This appears to be a situation that may lead to an interesting battle of experts, or with the experts' information in hand, the parties coming up with a resolution consistent with California and Federal law.

A look at Schedule I provides some interesting information. Debtor is unemployed and states having monthly income of \$600 from rental property or business and \$1,800 in unemployment compensation. Dckt. 1 at 30-31. No profit and loss statement, as required in ¶ 8a of Schedule I is provided for the \$600 in monthly income.

Looking at Schedule J, Debtor lives a very tight, almost destitute lifestyle. She has gas, repair and maintenance expenses of only (\$130) a month, with a vehicle insurance expense of (\$230) a month. *Id.* at 33. On Schedule A/B, Debtor states under penalty of perjury that she has no vehicle, but drives a 2008 Land Rover for which "title" is in Peter Baga, as is the loan on the vehicle. Further, that this vehicle "Does not belong to Debtor." *Id.* at 14.

On the Statement of Financial Affairs Debtor states under penalty of perjury that she was unemployed in 2019, 2020, and now 2021. *Id.* at 35-37.

### **Trustee's Objections to Exemption Pending**

Trustee notes that two objections to exemptions are pending, one for July 20, 2021 and one for August 10, 2021. Dckt. 51.

### **July 20, 2021 Hearing**

Currently pending before the court are two Objections to Exemption that relate to the property at issue. Until that is determined, the court is not going to proceed with this litigation that is dependent on that prior determination.

At the hearing the parties agreed to continue this for a Status Conference, pending the prosecution of the Objection to Exemption.

### **Objection to Exemption**

Debtor's Plan relies on two Motions to Avoid Liens. In turn, the avoidance could only be successful depending on the amount of Debtor's allowed homestead exemption.

The court having found that Debtor's homestead exemption is \$460,000, one Motion to Avoid Lien was granted only in part, leaving creditor Jonathan Neil & Associates with an \$88,000 secured claim that is not provided for in this plan. The court avoided the judgment lien of Cadles of West Virginia, LLC in its entirety.

### **AUGUST 17, 2021 HEARING**

At the August 17, 2021 hearing, **XXXXXXX**



Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor's Attorney on June 9, 2021. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Objection to Confirmation of Plan, as a supplement to the Chapter 13 Trustee's Objection, is overruled. However, the Chapter 13 Plan is not confirmed.**

Creditor Cadles of West Virginia ("Creditor"), opposes confirmation of the Plan on the basis that Plan seeks to avoid its lien over Debtor's property. The Objection was untimely filed and the court has taken it as a pleading in support of Trustee's timely filed Objection to Debtor's Plan. The court discusses Creditor's argument as part of the Trustee's Objection set for hearing on June 29, 2021 at 2:00 p.m.

### **Objection to Exemption**

Debtor's Plan relies on two Motions to Avoid Liens. In turn, the avoidance could only be successful depending on the amount of Debtor's allowed homestead exemption.

The court having found that Debtor's homestead exemption is \$460,000, one Motion to Avoid Lien was granted only in part, leaving creditor Jonathan Neil & Associates with an \$88,000 secured claim that is not provided for in this plan. The court avoided the judgment lien of Cadles of West Virginia, LLC in its entirety.

## **AUGUST 17, 2021 HEARING**

The court has denied confirmation of this Plan based on the Objection to Confirmation filed by the Chapter 13 Trustee. Objection, DPC-1; Dckt. 27.

At the August 17, 2021 hearing, **XXXXXXX**

# FINAL RULINGS

27. [20-23933-E-13](#) **JENNA HEDGES** **MOTION TO MODIFY PLAN**  
[MRL-1](#) **Mikalah Liviakis** **6-3-21 [18]**

**Final Ruling:** No appearance at the August 17, 2021 hearing is required.

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Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor’s Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on June 3, 2021. By the court’s calculation, 76 days’ notice was provided. 35 days’ notice is required. FED. R. BANKR. P. 2002(a)(5) & 3015(h) (requiring twenty-one days’ notice); LOCAL BANKR. R. 3015-1(d)(2) (requiring fourteen days’ notice for written opposition).

The Motion to Confirm the Modified Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party’s failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The debtor, Jenna Rae Hedges (“Debtor”), has filed evidence in support of confirmation. The Chapter 13 Trustee, David Cusick (“Trustee”), filed a Response indicating non-opposition on August 2, 2021. Dckt. 24. The Modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329 and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Modified Chapter 13 Plan filed by the

debtor, Jenna Rae Hedges (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, and Debtor’s Modified Chapter 13 Plan filed on June 3, 2021, is confirmed. Debtor’s Counsel shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee, David Cusick (“Trustee”), for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

28.	<a href="#"><u>21-21794-E-13</u></a> <a href="#"><u>DPC-1</u></a>	<b>TERESITO/MELICENT LEILA SEGUERRA Mikalah Liviakis</b>	<b>CONTINUED OBJECTION TO CONFIRMATION OF PLAN BY DAVID P. CUSICK 6-23-21 <a href="#"><u>[17]</u></a></b>
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**Final Ruling:** No appearance at the August 17, 2021 hearing is required.

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The Chapter 13 Trustee, David Cusick (the “Trustee”), having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Objection to Confirmation was dismissed without prejudice, the matter is removed from the calendar, and the Chapter 13 Plan filed on May 14, 2021, is confirmed.**

Counsel for the debtors, Teresito Ventura Seguerria and Melicent Leila Garces Seguerria (“Debtor”) shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Trustee for approval as to form, and if so approved, the Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the August 17, 2021 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor and Debtor’s Attorney on July 14, 2021. By the court’s calculation, 27 days’ notice was provided. 14 days’ notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection

<p><b>The Objection to Confirmation of Plan is overruled.</b></p>
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The Chapter 13 Trustee, David Cusick (“Trustee”), opposes confirmation of the Plan on the basis that:

- A. Debtor has failed to provide tax returns.
- B. Debtor has failed to provide pay advices.
- C. The Plan may not be feasible.
- D. Debtor fails the liquidation analysis.

## DISCUSSION

Trustee’s objections are well-taken.

### Failure to Provide Pay Stubs & Tax Returns

Debtor has not provided the Chapter 13 Trustee with employer payment advices for the sixty-day period preceding the filing of the petition as required by 11 U.S.C. § 521(a)(1)(B)(iv); FED. R. BANKR. P. 4002(b)(2)(A). Also, the Chapter 13 Trustee argues that Debtor did not provide either a tax

transcript or a federal income tax return with attachments for the most recent pre-petition tax year for which a return was required. *See* 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). Debtor has failed to provide all necessary pay stubs and has failed to provide the tax transcript. Those are independent grounds to deny confirmation. 11 U.S.C. § 1325(a)(1).

### **Failure to Afford Plan Payment / Cannot Comply with the Plan**

Debtor may not be able to make plan payments or comply with the Plan under 11 U.S.C. § 1325(a)(6). According to Trustee:

1. Debtor's Schedule B is inaccurate after Debtor admitted at the Meeting of Creditors that their business, Vannucci Technologies, Inc. has accounts receivables not listed;
2. Debtor states in Schedule I as "Business Owner" but at the Meeting of Creditors admitted that he is an employee of an S Corporation and provided pay advices for Vannucci Technologies, Inc.;
3. Trustee is uncertain as to Debtor's dependent where three are claimed but only a 17-year old is listed; and
4. The means test appears to be based on Vannucci Technologies, Inc., which includes the corporation's income and expenses. It is unclear to the Trustee if these expenses were also included as part of the Business Expenses listed on Form 122C-2, since these expenses do not appear to be listed on Schedules I or J.

Without an accurate picture of Debtor's financial reality, the court cannot determine whether the Plan is confirmable.

### **Debtor Fails Liquidation Analysis**

The Chapter 13 Trustee opposes confirmation of the Plan on the basis that Debtor's plan may fail the Chapter 7 Liquidation Analysis under 11 U.S.C. § 1325(a)(4). The Chapter 13 Trustee states that Debtor are taking impermissible deductions by factoring in costs of sale and incorrect trustee's fees, to lower the amount of equity and not pay what the Chapter 7 creditors are owed. Trustee argues that Debtor should not be allowed to deduct cost of sale on assets that would not otherwise be liquidated in the Chapter 7 or are fully encumbered (either by secured liens or exemptions). Trustee further adding that Debtor are using an incorrect formula and amount for deducting the Chapter 7 Trustee's fees which is causing the deduction to be higher than it should be.

The Trustee believes the liquidation amount is \$32,949.29, which is comprised of the equity as follows: Ford F150 \$1,514; Ford F-350 \$23,277; Ford F-550 \$2,222; 1974 Nova \$750; Maximum Cruiser \$1,000; Honda 400 \$500; 2007 Honda Rancher \$900; 2011 Attitude Travel Trailer \$2,500; cash \$5; and bank accounts \$281.25.

The Trustee reported that information provided the plan may be feasible, but they need to investigate transfers made by the Debtor's corporation.

## Trustee's Supplemental Reply

Trustee filed a Reply on August 13, 2021 informing the court that Trustee no longer opposes confirmation on the basis that Debtor has provided tax returns and pay advices; Trustee believes 11 U.S.C. § 1325(b) and the liquidation value are satisfied. Dckt. 62. Trustee notes that after reviewing Debtor's tax returns, the Internal Revenue Service priority claim may be less than the claim filed and Debtor may need to object if the IRS does not amend it. *Id.* Trustee has also reviewed Debtor's corporate transfer to Paula Lorenzo and does not believe the transfer is avoidable. *Id.*

Trustee requests the court confirm the plan provided it follows the form of order provided as Exhibit A (Dckt. 54, pp. 3-4).

Trustee no longer opposing confirmation, the Plan does complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by Name of Creditor ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and William James Vannucci's ("Debtor") Chapter 13 Plan filed on June 3, 2021 as amended in the proposed Order for Confirmation filed as Exhibit A, Dckt. 54, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the August 17, 2021 hearing is required.  
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Local Rule 9014-1(f)(2) Objection—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Objection and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on July 14, 2021. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to Confirmation of Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). Debtor, Creditors, the Chapter 13 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the Objection, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the Objection.

**The Objection to Confirmation of Plan is overruled.**

JPMorgan Chase Bank National Association ("Creditor") holding a secured claim opposes confirmation of the Plan on the basis that the Debtor's plan fails to provide for the full value of Creditor's claim and does not promptly cure Creditor's pre-petition arrears.

## DISCUSSION

On August 3, 2021 Debtor filed as Exhibit A, a copy of an order confirming Debtor's plan which provides that the plan was amended to provide for Creditor claim as follows:

**IT IS FURTHER ORDERED** that, pursuant to 11 U.S.C. § 1323, the plan is amended as follows: JPMorgan Chase Bank National Association's ("JP") secured claim (\$241,453.61) is moved to Class 1 of Debtor's Plan. JP shall be paid its contractual payment monthly (approximately \$1590) as well as a monthly arrearage dividend of \$430 beginning month 13 of the Plan to pay the full arrearage (\$20,644.91) on JP's claim. Additionally, post-petition arrears of \$4,764.21 shall be paid by the Trustee at a rate of \$430 per month beginning month 4 of the Plan.

Dckt. 54 at 4.



The specific term was signed by Wendy Locke on August 2, 2021, which further stated the following:

Approved by Wendy Locke, Attorney for JPMorgan Chase Bank National Association.

*Id.*

The court continues the hearing to have it conducted in conjunction with the hearing on the Trustee's Objection to Confirmation.

### **August 17, 2021 Hearing**

Trustee having filed a Reply requesting the plan be confirmed with the order confirming including the language stated in Exhibit A, Dckt. 54, the language providing for Creditor's claim, it seems that no further objections exist to the plan.

The Plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, and the Plan is confirmed.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by JPMorgan Chase Bank National Association ("Creditor") holding a secured claim having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, and William James Vannucci's ("Debtor") Chapter 13 Plan filed on June 3, 2021, as amended in the proposed Order for Confirmation filed as Exhibit A, Dckt. 54, is confirmed. Counsel for Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.